

AMBIF Bond and Note Issuance: Relevant Features in Cambodia

In addition to market features corresponding to the AMBIF Elements, a number of general Cambodian market features for bond and note issuance to Qualified Investors need to be considered by market participants. These features are described in this chapter.

A. Governing Law and Jurisdiction

Governing law and the jurisdiction for specific service provisions in relation to a bond or note issuance may have some relevance in the context of AMBIF. Potential issuers may consider issuing under the laws or jurisdiction of an economy or market other than the place of issuance. The choice of governing law or the contractual preferences of stakeholders can affect accessibility to a specific investor universe that may otherwise not be accessible if a bond or note were issued under the laws of the place of issuance. However, provisions related to bond or note issuance and settlement must be governed by the laws and regulations of the place of issuance since an AMBIF bond is a domestic bond.

The Kingdom of Cambodia's legal system follows the civil law tradition. In Cambodia, the governing law and the jurisdiction of agreements by contracting parties are required to be Cambodian law and the Kingdom of Cambodia, respectively. At the same time, while a request for the use of another law or jurisdiction has not yet been received, the SECC may offer some flexibility, such as consideration on a case-by-case basis for issuers to use the laws or jurisdictions of countries for which it has entered into a memorandum of understanding with the respective securities market regulatory authorities. It is likely that taxation considerations will also play a role in the SECC review and decision.

If law other than Cambodian law is chosen as the governing law in the transaction documents, the parties thereto may choose a specific jurisdiction of a court in which disputes will be adjudicated. However, if bonds or notes are issued denominated in Cambodian riel, Cambodian law should normally be used to govern issuance and settlement related issues, regardless of governing law(s) of other matters.

Notwithstanding the above, the Cambodian courts and courts of other jurisdictions may have jurisdiction over disputes arising in relation to such bond issuances, to the extent permitted by Cambodian or other relevant laws.

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

B. Language of Documentation and Disclosure Items

It is envisaged that most ASEAN+3 markets participating in AMBIF will accept the use of a common document in English. However, some markets may require the submission of approval-related information in their prescribed format and in the local language. In such cases, concessions from the regulatory authorities for a submission of required information in English—in addition to the local language and formats—may be sought.

Presently, all contracts, applications for securities issuance and listing, licensing or accreditation approvals, and securities-issuance-related documentation and disclosure items, as well as correspondence with regulatory authorities and market institutions (if so required), must be in Khmer, which is the official language of the Kingdom of Cambodia.

During the application for the issuance of securities, the SECC requires all relevant contracts in relation to such issuance to be submitted (see also Chapter III.B.1 for details). According to provisions in the Anukret on the Implementation of the Law on Issuance and Trading of Non-Government Securities (No. 54 ANKR BK), contracts that are not originally written in Khmer shall be attached and also translated into Khmer by persons recognized by the SECC.

From a practical perspective, it should be assumed that contracts entered into between an issuer and the domestic agents required in the context of a bond or note issuance, such as bondholders representative, cash settlement agent, and securities registrar, will be written and executed in Khmer (see also next section).

At the same time, the disclosure document for the issuance of debt securities may also be in English. It may be produced first in English, as long as the final version of the disclosure document will be available in Khmer at the time the offer of debt securities commences. In any case, the issuer will be required to maintain equivalency of information between document versions in both languages.

The SECC is presently studying whether an application form in Khmer and supporting documents in English may be acceptable.

During the listing eligibility review (the process is explained in Chapter III), CSX accepts draft or working copies of key disclosure and supplementary documents in English, including the SSF. Legally binding contracts and other material information need to be submitted to CSX in Khmer.

For the listing application, the key disclosure document that was registered by the SECC, such as the SSF, will need to be submitted to CSX and has to be in Khmer. While the Listing Application Form itself contains text in both Khmer and English, it will need to be completed in Khmer, as per current CSX requirements.

CSX already accepts and displays initial and continuous disclosure information in both English and Khmer (as available) on its website.

C. Official and Market Documentation

Parties involved in a bond or note issuance in Cambodia are required to submit a number of official documents and/or execute contracts or agreements that govern the relationships between the service providers and the issuer and investors, respectively. These documents and contracts or agreements are required for normal market

issuances and for issuances under AMBIF. However, these Implementation Guidelines only detail the official documents and market documentation for an AMBIF issuance.

Applicable market documentation can be distinguished between official documents for submission by the issuer to authorities and market institutions, and those market documents to be concluded by the issuer or other parties with their service providers.

1. Official Documents

Key among the official documents for an AMBIF issuance are the application form and the key disclosure document for the issuance to be submitted to the SECC, and the Listing Application Form and agreement to be submitted to CSX.

a. Issuance Application Form (to SECC)

The issuance application form is a format mentioned in regulations and specified by the SECC as the cover letter for the issuance application for debt instruments in the Cambodian market. The issuance application form will need to be completed in Khmer and is to be accompanied by the key disclosure document and other supporting documents, as stipulated in the Prakas on Debt Securities Offering to Qualified Investors.

b. Key Disclosure Document (Single Submission Form)

The SECC considers the SSF as the key disclosure document for AMBIF issuances in Cambodia. The SSF is a template document created and maintained by ABMF. Appendix 1 of these Implementation Guidelines contains a link to the latest version of the SSF.

The SSF template is based on the style and format of an information memorandum, the standard documentation used in international bond markets for bond and note offers to professional investors. The SSF has been normalized by ABMF across the ASEAN+3 markets participating in AMBIF and contains common issuer and issuance information and disclosure information, plus some additional information specifically required in selected markets only.⁷

The SSF is created and maintained in English to achieve maximum reusability for an issuer tapping a number of AMBIF markets. Please also see section B for details on the language of official documents in Cambodia.

c. Listing Application Form (to CSX)

The Listing Application Form is an official form provided by CSX that is to be submitted at the beginning of the listing approval process and is a separate document from the key disclosure document (see item b). Please see Chapter III for a complete description of the regulatory process for an AMBIF issuance, including listing.

The Listing Application Form contains text in both the Khmer language and English, but has to be completed in Khmer. The form is to be signed and stamped by the issuer and underwriter, and submitted in physical form in duplicate.

The Listing Application Form needs to be obtained from CSX, and is presently not available for download from the CSX website.

⁷ At the time of the compilation of these Implementation Guidelines, the participating economies included Cambodia; Hong Kong, China; Japan; Malaysia; the Philippines; Singapore; and Thailand.

d. Securities Listing Agreement

The issuer will need to sign a Securities Listing Agreement with CSX prior to the listing of an AMBIF issue taking effect. The Securities Listing Agreement is an existing standard contract provided by CSX in the Khmer language and approved by the SECC.

2. Market Documentation

Market documentation refers to documents or contracts that are to be concluded between the issuer or investors and their service providers. Some of these documents are part of the supporting documents or attachments to official documents during the issuance and listing approval process.

a. Bondholders Representative Agreement

A bondholders representative acts on behalf of the investors in the context of a bond or note, but is appointed by the issuer. The appointment of a bondholders representative is only mandatory for Debt Securities Offerings to all Qualified Investors (i.e., both Institutional Investors and High Net-Worth Investor); if the offering is aimed at Institutional Investors only, the appointment of a bondholders representative is optional. Please see section G for a full description of the bondholders representative function.

To appoint a bondholders representative, the issuer and the selected bondholders representative need to enter into a Bondholders Representative Agreement. The agreement sets out the duties of the bondholders representative and its rights and obligations under SECC provisions. The agreement also compels the issuer to provide regular information to the bondholders representative and comply with SECC prescriptions. The Bondholders Representative Agreement and its contents should be expected to follow Cambodian law as governing law.

Under the current regulatory framework for the corporate bond market, the Bondholders Representative Agreement, if executed, is to be submitted to the SECC as a supporting document to the issuance application form, as well as to CSX when completing the listing application. As a material contract, the Bondholders Representative Agreement is required to be submitted to the SECC and CSX in Khmer.

In a mature market, the Bondholders Representative Agreement is typically provided by the service provider (a commercial bank or securities firm) offering the services of a bondholders representative; the agreement is usually in the form of a template, which may be subject to negotiation within the regulatory framework and completion based on mutual requirements and understanding.

b. Client Agreement or Custody Agreement

Professional investors, which in Cambodia are referred to as Qualified Investors, often have very specific requirements for the safekeeping and settlement of their investment assets and associated services. Many professional investors are subject to prudential regulations in their home market, which contain prescriptions on types of investments, asset safety, and limitations of risk.

To comply with these provisions, professional investors must actively seek the services of custodians in the markets they invest in. The absence of a dedicated custodian function, or an underlying agreement for the provision of such function, may be cause not to pursue investments in a given market, particularly for foreign institutional investors.

In Cambodia and in the context of AMBIF, the client agreement, which internationally is also termed a custody agreement, is a contract to be entered into between a Qualified Investor (resident or nonresident) and a service provider accredited as a custodian agent by the SECC. In the absence of accredited custodian agents, the function of a custodian agent can also be performed by other parties who are participants in the designated depository for corporate debt securities in Cambodia (i.e., securities firms). If so, the securities firm would enter into a custody agreement with the investor. Please also see section J in this chapter on the present asset safekeeping practices and future custodian agent service.

A custody agreement is typically provided as a template by the custodian or securities firm, and the contents negotiated or finalized between investor and custodian, depending on the service level required by the investor and the service capabilities available from the custodian.

For reference, Article 22 of the Prakas on the Accreditation of the Custodian Agent in the Securities Sector details the content expectations set by the SECC.

c. Underwriting Agreement

The issuer will need to enter into an underwriting agreement, with an underwriter licensed by the SECC, prior to an issuance application to the SECC. The underwriting agreement, or an engagement letter, is considered the designated supporting document for such an issuance application, as well as for the listing application to CSX.

The underwriting agreement is typically provided by the underwriter to the issuer, commensurate with the agreed provision of a firm or best-effort underwriting commitment, and subject to negotiation before conclusion and execution. The agreement may be in Khmer and/or in English, but is required to be presented to the SECC and CSX as a supporting document in Khmer.

In cases where a Debt Securities Offering to Qualified Investors is underwritten by a number of underwriters, including those selling the securities to nonresident investors in markets other than Cambodia, the governing law of the underwriting agreement may be chosen in line with the targeted market or investor universe.

d. General Service Contracts

In the context of a corporate debt securities issuance in Cambodia, including an AMBIF issuance, the issuer may be required to appoint a number of other service providers for specific functions mandated by the SECC (see Chapter III for details). These include a cash settlement agent; a credit rating agency (CRA); and a securities registrar, transfer and paying agent licensed or accredited by the SECC. The issuer will typically also have established relationships with an audit firm and legal counsel; the audit and law firms have to be accredited by the SECC for services to participants in the securities sector.

These service providers normally enter into a general service contract with the issuer, the contents of which are determined by the service provision, the issuer's specific requirements, and applicable prescriptions in laws and regulations, including those outside the securities sector. The contract is typically provided by the service provider and likely subject to negotiation between issuer and service provider before conclusion and execution. The abovementioned services already exist in Cambodia, and a number of service providers are already licensed or accredited with the SECC—with the exception of CRAs. As such, the respective service contracts are typically already in use in the market.

Since these service providers are domestic entities in Cambodia, the expected language of the service contracts is Khmer. In the absence of a domestic CRA in Cambodia, the service contract with an international CRA (if so appointed) would likely be in English.

The service contracts with a CRA and a securities registrar are designated supporting documents for the issuance application to the SECC and the listing application to CSX, including when using the SSF as the application document. On the other hand, the service contract or agreement with the cash settlement agent, auditor, and law firm are prerequisites for an issuance of debt securities since the SECC requires confirmations, opinions, or statements from these parties (termed "experts" in regulations) as supporting documents to an issuance application.

D. Credit Rating

As part of a comprehensive set of measures to launch the corporate bond market, the SECC introduced the Prakas on Accreditation of Credit Rating Agency in August 2017. This regulation addresses the eligibility criteria and requirements for CRAs to operate in Cambodia, including international entities.

Publicly offered debt securities will need to carry a credit rating from an accredited CRA in Cambodia. A credit rating is required if the issue is a plain or secured bond. If the issue is a guaranteed bond, a credit rating on the issue is not required, but the guarantor of the bond needs to be rated.

In case no CRA has been accredited by the SECC, the issuer shall submit a report on the level of ratios—such as profitability and cash flow ratio, leverage ratio, coverage ratio, and other such applicable ratios—together with a certification of their appropriateness from the underwriter or the experts appointed by the issuer.

Under the Debt Securities Offering to Qualified Investors concept, the SECC allows the need for a credit rating to be set by the parties involved. However, it has been observed in other markets that market participants may still prefer to have credit ratings in place since many market participants designated as professional investors (Qualified Investors in Cambodia) may not be able to replicate in-house the credit assessment process undertaken by the CRAs.

E. Offering Methods

Underwriters or issuing agents for Debt Securities Offerings to Qualified Investors need not conduct a formal book-building exercise during the placement of the debt securities. This is to avoid the appearance of advertisements for such Debt Securities Offerings to Qualified Investors, which would automatically trigger a full public offering.

Inquiries and reverse inquiries are seen as the likely offering methods for Debt Securities Offerings to Qualified Investors in Cambodia.

F. Transfer Restrictions

Under the prescriptions of the SECC for Debt Securities Offerings to Qualified Investors, only Qualified Investors may be offered debt securities issued under this concept, and they may only transfer these debt securities to other Qualified Investors.

Pursuant to the Prakas on Debt Securities Offering to Qualified Investors, published on 5 May 2020, the issuer of such debt securities will need to specifically state this transfer restriction in the disclosure document and also provide a corresponding statement to the SECC in the application documents when seeking issuance approval. While the Prakas states the term “transfer restrictions,” the practical application equates to selling and transfer restrictions for Qualified Investors.

All investors in the Cambodian securities market will need to obtain an investor ID prior to commencing their buying of securities (see also section G). Institutional Investors are distinguished through a separate application form from individual investors and by the need to supply constituting documents. The distinction as an Institutional Investor (i.e., one category of the Qualified Investors concept) and documentation will remain on file with securities firms used by the investors. As such, the classification of Institutional Investors is possible upon transactions through their investor ID, name, and underlying documentation.

Securities firms executing trades on behalf of Institutional Investors will need to ascertain when carrying out transactions that these transactions are indeed for Institutional Investors by verifying the investor ID. This is supported by the inclusion of the investor ID in the transaction dataset from trade to settlement.

G. Note Issuance Program

AMBIF promotes the medium-term note (MTN) program, or the note issuance program, format because it not only gives funding flexibility to issuers, but it also represents a common format of bond issuance in the international bond market. This means that potential issuers as well as investors and intermediaries are likely to be familiar with the note issuance programs and related practices in ASEAN+3 markets. Hence, this would make AMBIF comparable to the relevant practices of the international bond market. At the same time, it is expected that potential issuers can benefit from reusing or adopting existing documentation and information disclosure. The SSF already supports multiple issuances.

At this stage, the issuance of domestic bonds or notes to professional investors via an MTN or note issuance program is not evident in the Cambodian market. However, at the time of the compilation of these Implementation Guidelines, the SECC was in the process of evaluating the practical use of an MTN or note issuance program, or a shelf-registration program (for public offerings).

H. Bondholders Representative

The bondholders representative represents the interests of bondholders in the event of default or bankruptcy of the issuer, or other disputes between investors and issuer, and monitors the condition of the issuer and the issued debt securities through their

life cycle. The bondholders representative is required to report to bondholders such status at least every 6 months.

The function of the bondholders representative was introduced in the Prakas on Accreditation of Bondholders Representative, published by the SECC in August 2017. As the title of the *Prakas* suggests, a bondholders representative needs to be accredited by the SECC to carry out said function. Eligible entities are commercial or custodian banks; securities firms; and securities registrars, securities transfer and paying agents. The term accreditation is used since eligible entities are already licensed by the SECC to undertake corresponding business in the securities market; in the case of banks, they are licensed by the NBC.

An accreditation as bondholders representative is valid for 3 years and may be renewed via application to the SECC at least 45 days before the expiry of the current accreditation term.

The appointment of a bondholders representative is mandatory for the issuance of nongovernment (corporate) debt securities via a public offering and Debt Securities Offerings to all Qualified Investors, but not mandatory for Debt Securities Offerings to Qualified Investors if limited to the Institutional Investor category.

I. Investor Identification

All investors—both domestic and foreign—need to obtain an investor ID prior to investing in the Cambodian securities market. The only distinction between domestic and foreign investors is an indicator in the actual ID (“D” or “F” for domestic or foreign, respectively). The investor ID is used as a distinct identifier in transactions and the securities accounts at CSX (see also next section).

Investors may apply directly to the SECC or through their securities firms. Institutional investors—including those eligible as Qualified Investors—need to fill out Application Form B (Application Form A is for individual investors) and attach their company license, company registration certificate (or equivalent), articles of association, identification card (Cambodian citizens) or passport details (foreigners), and photos of the responsible officers, as well as a power of attorney in their favor.

The necessary steps on how to become an investor in the Cambodian securities market are well explained in the Investor Guide, which is downloadable from the SECC website.⁸ Application Form B is also available for download from the SECC website.⁹

The SECC issues a notice to the market in case the contents of the form or the application or approval procedure changes. These notices are also viewable on the CSX website in the News and Publications section.

J. Asset Safekeeping

The SECC issued the Prakas on the Accreditation of the Custodian Agent in the Securities Sector (Prakas No. 002/2018/SECC/Pr.K.) in May 2018 to facilitate the creation of a dedicated custodian function in the Cambodian securities market.

⁸ See <http://csx.com.kh/news/brochure/viewPost.do?MNCD=7040&postId=86>.

⁹ See <http://csx.com.kh/news/notice/viewPost.do?MNCD=8020&postId=242#.WBw4BktSgpE>.

A custodian agent may be a bank or the operator of the securities depository of CSX. In the case of a commercial bank, a no objection letter from the NBC must be obtained prior to application.

For operational reasons, the custodian agent will have to be a member of the securities depository operated by CSX. CSX itself is also mentioned as an eligible custodian agent in the *Prakas*.

Since the application and approval of custodian agents by the SECC, and the establishment of such custodian agent functions in successful applicant(s), may take some time, these Implementation Guidelines will explain the present asset safekeeping practices in the Cambodian securities market, with a view to alleviating concerns of potential investors as to the safety and protection of their holdings.

1. Current Intermediaries

The current intermediaries in the Cambodian bond market consist of two groups, the securities firms as trading members of the exchange and the so-called CSX “participants.” Both types of intermediaries play a role in the settlement process for debt instrument transactions.

CSX participants presently refer to the cash settlement agents (CSAs) who facilitate the settlement of the cash leg of a settlement in CSX. There are presently four CSA participants in CSX.¹⁰

Once custodian agents have been approved by the SECC, these custodian agents will also become CSX participants.

2. Account Identification and Segregation of Assets

Securities firms will open one securities account for proprietary trading and holdings, and one client account with subaccounts for each of their investor clients in CSX Depository. The client account and its subaccounts are not part of the securities firm's holdings. Investor holdings are clearly identifiable through the name of the securities subaccount. In addition, through their account opening documentation, securities firms indemnify their investor clients against misuse of their holdings.

Securities firms will also open and maintain cash accounts with one of the CSAs: one for proprietary cash balances (“principal account”) and a so-called “client money account,” which is an omnibus account to facilitate cash settlement for client transactions. CSAs consider any balances in the client money account as belonging to investors. Securities firms will instruct their CSA to transfer funds for the settlement of investors' securities transactions based on client orders. A corresponding request to the CSA from the operator of CSX Depository ensures that no cash transfer occurs without an underlying securities transaction.

In turn, investors will open a cash account, typically with one of the CSAs participating in CSX Depository. This is intended to allow the securities firm to check the cash account balance prior to placing a purchase order on CSX (see also next section). Investors fund their purchases by instructing the CSA to transfer funds from their own cash account to the client money account of the securities firm placing orders on their behalf. Securities firms do not have direct access to the cash account of their investor clients.

¹⁰ The list of CSX participants, including CSAs, is available from the CSX website at <http://csx.com.kh/en/member/participants.jsp?MNCD=10512>.

The securities account number in CSX is a randomly assigned number, while the investor ID becomes part of the securities subaccount identification. The cash account number is assigned by the CSA of the investor.

3. Central Records Access at Cambodia Securities Exchange Depository

CSX Depository provides securities safekeeping and settlement records to its securities firm members in the form of system access to securities accounts under each securities firm's purview in the depository database. System access is separated for the proprietary account and client accounts of each securities firm, and subject to an audit trail. Securities firms may not transfer assets out of a client account unless a client instruction has been recorded.

In addition, CSX offers the viewing of the cash balances of each investor as a service to its members. The cash balances are uploaded into CSX Depository at the end of each business day by the CSAs—with any cash settlement for the current day added to the previous day's cash balance by CSX—to be able to show a current cash balance. The cash balances are for viewing purposes only and are not part of the legal records of CSX; no cash transfers can be initiated through this viewing function. Securities firms need to check the cash balance of an investor client prior to placing orders.¹¹

4. Introduction of Custodian Agent

The Prakas for the Accreditation of the Custodian Agent in the Securities Sector (Prakas No. 002/18 SECC/Pr.K.) was promulgated by the SECC on 29 May 2018 and introduced the function of a dedicated custodian—referred to as custodian agent in the *Prakas*—to the Cambodian securities market.

Custodian agents may be commercial banks, owing to the requirement to conduct foreign exchange transactions for investor clients, which is principally only available under a banking license. However, the operator of the securities depository of CSX is also mentioned in the *Prakas* as an institution eligible to be a custodian agent. Custodian agents need to be accredited with the SECC following an application process. The accreditation has no expiry or renewal date.¹²

The *Prakas* prescribes that custodian agents are subject to a number of eligibility criteria for the institution and its staff, and it defines obligations and service principles for the custodian agent. The provisions include that the custodian agent should open custody accounts in the names of the investors and prohibit comingling of the client assets with the custodian agent's own assets.

Please also see section C.2 in this chapter for the custody agreement applicable in this context—referred to as client agreement in the *Prakas*—and related practices.

K. Foreign Exchange

Under the Prakas for the Accreditation of the Custodian Agent in the Securities Sector, investors using the services of a custodian agent in Cambodia are required to carry out all foreign exchange transactions via their appointed custodian agent.

¹¹ In principle, investors may open a cash account with any bank in Cambodia to fund their purchases by remitting required cash amounts to the securities firm's client money account at the appropriate time. However, if the account is not opened with a CSA, the securities firm will not be able to check the cash balance of the investor through CSX and, hence, it may result in the investor having to fully prefund any trades.

¹² The term "accreditation" is used by the SECC to indicate that applicants already have an underlying business license for their market activities.