

AMBIF Bond and Note Issuance: Relevant Features in Hong Kong, China

In addition to the market features corresponding with the AMBIF Elements, a number of general market features for AMBIF bond and note issuance to professional investors in the Hong Kong, China domestic bond market will need to be considered, and are described in this chapter.

Governing Law and Jurisdiction

Governing law and the jurisdiction for specific service provisions in relation to a bond or note issuance may have relevance in the context of AMBIF, since potential issuers may consider issuing under the laws or jurisdiction of a market other than the place of issuance. The choice of governing law or the contractual preferences of stakeholders can affect the 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, it is necessary to point out that laws 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 or note is a domestic bond or note.

Hong Kong Basic Law, and the stated views of the regulatory authorities and market institutions, permit the use of governing law or jurisdictions other than the Laws of Hong Kong for transactions in the financial markets of Hong Kong, China. Parties involved in a bond or note issuance may select the governing law or jurisdiction(s) according to their contractual preferences, provided that such provisions do not contravene the Laws of Hong Kong.

Language of Documentation and Disclosure Items

It is envisaged that most of the ASEAN+3 markets participating in AMBIF will be able to 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 these regulatory authorities for a submission of required information in English, in addition to the local language and formats, may be sought.

In Hong Kong, China, contracts, bond and note issuance documentation and disclosure items, applications to and approvals from market institutions, and correspondence with regulatory authorities and market institutions are expected to be in English.

Credit Rating

A credit rating is not mandatory for bonds and notes to be issued to professional investors in the Hong Kong, China market. Issuers may choose to use a credit rating if it would satisfy

investor demand. As of 2014, the majority of bonds and notes listed on HKEx carried an investment grade rating.

A credit rating is also not a specific criterion for eligibility to list a bond or note aimed at professional investors in the Professional Bonds market on HKEx.

Selling and Transfer Restrictions

Selling and transfer restrictions for bonds and notes intended for professional investors are well defined in Hong Kong, China in the law, supplementary regulations, and Listing Rules for the Professional Bonds market on HKEx.

All selling and transfer restrictions for bonds and notes intended for Institutional Investors are also well defined in the issuer's selling documentation in accordance with the related provisions under the SFO.

In addition, intermediaries for trades in bonds or notes listed as Professional Bonds, or in OTC-traded bonds and notes aimed at professional investors, are subject to the SFC's Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) in which the duties and obligations of these intermediaries are described, including limitations to selling and transfer of such bonds and notes to investors who do not qualify as professional. Intermediaries are required to reference the SFC Code of Conduct in their know-your-customer materials and procedures. Specific language for selling and transfer restrictions exists in the Hong Kong, China market and is expected to be used.

The SFC Code of Conduct also contains a definition of professional investors, as proposed and used by the Hong Kong Association of Banks. Membership in the association requires the recognition and acceptance of the SFC Code of Conduct and the definitions contained therein.

A recent court ruling determined that exemptions claimed for bond and note issuance to professional investors via private placements, in contrast with public offers, will only apply if the issuance documentation and offering materials carry explicit statements that said bonds and notes are only to be sold to professional investors. This court ruling is presently under appeal.

In this context, the SFC has started public consultations on the need to strengthen the manner in which market participants treat professional and nonprofessional investors. Concluded changes to the present SFO provisions are expected to take effect by March 2016.

Note Issuance Programs

AMBIF promotes the use of note issuance programs, such as the medium-term note (MTN) format, because they not only give funding flexibility to issuers but also represent the most common format of bond and note issuance in the international bond market. This means that potential issuers, as well as investors and intermediaries, are likely to be familiar with note issuance programs and related practices. Hence, this would make AMBIF comparable to the relevant practices in the international bond market. At the same time, it is expected that potential issuers may benefit from reusing or adopting existing documentation or information on disclosure items.

Note issuance programs are well established and widely accepted in the Hong Kong, China market, and are the most preferred issuance option for issuance to professional investors, both in the domestic and international segments. Issuers include domestic corporates and government-linked organizations. Note issuance programs are subsumed under bonds and notes in the definition of securities in the SFO Schedule 1.

Bond Trustee and Trust Deed

Issuers or their agents in the issuance of a bond or note to professional investors may appoint a bond trustee. Having a bond trustee is optional for bonds and notes issued to professional investors and/or profile listing on HKEx.