

AMBIF Bond and Note Issuance: Relevant Features in Japan

In addition to the market features corresponding to the AMBIF Elements, a number of general market features for AMBIF bond and note issuance to Professional Investors in the Japanese domestic bond market 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 an economy or 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 bonds or notes were issued under the laws of the place of issuance. However, it is necessary to point out that laws related to bond and note issuance and settlement must be governed by the laws and regulations of the place of issuance since AMBIF bonds and notes are domestic bonds and notes.

Governing law and jurisdiction, with respect to the Terms and Conditions of the Notes, may be agreed among the contract parties, subject to relevant provisions in applicable laws and regulations. For bonds and notes settled in Japan, at present, JASDEC requires that the Terms and Conditions of the Notes shall be governed by Japanese law.

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.

Documentation in English language is accepted by TPBM.

Credit Rating

Note issuance programs or corporate bonds and notes listed on TPBM must obtain a rating from a credit rating agency recognized internationally and/or by Japanese investors. The rating needs to be disclosed, but the level of the rating is not an eligibility criterion for TPBM.

With regard to the bonds and notes issued by a foreign government or local government (both domestic and foreign), or guaranteed by a national or local government (domestic or foreign), or by certain financial institutions recognized by TSE, a credit rating is not required.

Currently, credit rating agencies recognized by TPBM include

1. Standard & Poor's,
2. Moody's,
3. Fitch Ratings,
4. Rating and Investment Information,
5. Japan Credit Rating Agency, and
6. RAM Rating Services.

Lead Managing Underwriter List

In Japan, an issuer needs to choose a lead managing underwriter for a note issuance program or bonds and notes to be listed on TPBM from among the Lead Managing Underwriter List prepared by TSE. The Lead Managing Underwriter List is simply a list of securities companies that could potentially serve as a lead managing underwriter when listing bonds or notes on TPBM or when disclosing program information. The current list can be found at <http://www.jpx.co.jp/english/equities/products/tpbm/listing/O4.html>

This list will be updated by TSE according to the applications from securities companies.

A securities company wishing to register on the list is to file an application with TSE. TSE, which will then examine the application while considering such factors as that party's appropriate domestic and overseas experience as a lead managing underwriter. Conversely, if TSE deems the continued inclusion on the list of a party to be inappropriate (as would be the case, for instance, if that party decides to withdraw from the bond underwriting business), TSE, at its discretion, may remove that party from the list.

A securities company is not required to pay a fee for inclusion on the Lead Managing Underwriter List.

One exception exists for the need to select an underwriter from the Lead Managing Underwriter List in case a financial institution deemed suitable by TSE were to purchase the whole amount of a bond issue. Here, the financial institution would confirm the quality of the bonds or notes.

Appointment of Entrustment of Bond Manager

The appointment of a bond trustee or commissioned company or person (bond manager) for bonds or notes to be listed on TPBM is optional. The majority of bonds and notes listed on TPBM instead feature a fiscal agent as an agent of the issuer.

Note Issuance Programs

AMBIF promotes the use of note issuance programs, such as the medium-term note 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 on TPBM. Program information is equivalent to the euro medium-term note program and indicates the maximum limit for the value of bonds that can be issued within a set period together with basic financial and other information. Program information is basically to be rated, and a candidate for lead managing underwriter is to be listed. Once this is done, one can flexibly issue and list the bonds on TPBM at the time of issuance. Program information is basically treated as SSI, as prescribed in Article 27-31 of the FIEA. Therefore, by submitting program information to the exchange for public announcement, one can start solicitation for the investment in bonds that are newly issued based on said program information.

Selling and Transfer Restrictions in TPBM

Selling and transfer restrictions in the Japanese market are comprehensive and specific. Bonds and notes issued through TPBM shall not be sold or transferred to any person other than Professional Investors or nonresident (foreign) investors, as mentioned in Chapter I.

The FIEA requires that a contract on restriction on transfer (transfer restriction agreements) should be entered into between the issuer and the person (Professional Investor) seeking to purchase the bonds or notes, and between the solicitor or offeror (securities company) and the purchaser or acquirer. The FIEA also requires notification to the purchaser to the effect that if the bonds or notes are not notified to the authority, the securities registration statement or the shelf-registration statement is not registered with the FSA, and the bonds or notes may be sold only to Professional Investors.

In addition, a restriction on transfer contract and notification with a Professional Investor for all TPBM-related bonds and notes transactions in a comprehensive way may be allowed in current market practice. For further details, please refer to Questions 55 and 56, and the answers thereto, in the Q&A section on the TPBM website.²

In July 2015, the FSA opened a public consultation on the potential relaxation of the defined measures for selling and transfer restrictions laid out in Article 12 (i) (b) of the related Cabinet Office Ordinance.³ According to the FSA proposal, in addition to the current entering into contracts between issuer and acquirer and between intermediary and professional investor, the current method could be replaced by other methods, including a description of the selling and transfer restrictions in the Terms and Conditions of the Notes,

² Japan Exchange Group. Q&A about the TOKYO PRO-BOND Market. <http://www.jpx.co.jp/english/equities/products/tpbm/outline/tvdivq0000006xw-att/201503Q&AinEnglish.pdf>

³ Article 12, (i) (b) of the Cabinet Office Ordinance on Definitions under Article 2 of the FIEA (Current description): that the Solicitation of Offers to Acquire includes, as a condition of the acquisition, the conclusion of a contract on transfer specifying the matters provided in paragraph (1) of the preceding Article between the Issuer of the relevant Securities and the person who wishes to acquire said Securities in response to the Solicitation of Offers to Acquire them (hereinafter referred to as the "Acquirer" in this item), and between the person who is carrying out the Solicitation of Offers to Acquire said Securities and the relevant Acquirer.

or in the SSI, in combination with other measures that will relate this information to the Professional Investor by the intermediary; in turn, the Professional Investor would have to acknowledge the contents, including the observance of these selling and transfer restrictions.

One possible such combination would be the description of selling and transfer restrictions and the aforementioned acknowledgement process in the Terms and Conditions of the Notes, or in the SSI, and the sending of the information to the Professional Investor by the intermediary, as long as a record of sending the document to the registered e-mail address on the investor's trading account with the intermediary is retained. The forms of the acknowledgment could be expected to develop in line with market practices following the public consultation and resulting changes to the aforementioned Article 12.

Inclusion of selling and transfer restrictions in the Term and Conditions of the Notes is one way to fulfill a part of the requirements of the FIEA. The sample wording is shown in the text box for reference.

Financial Reporting Standards

TSE recognizes Japanese Generally Accepted Accounting Principles (J-GAAP), United States Generally Accepted Accounting Principles (US-GAAP), and International Financial Reporting Standards as financial reporting standards for an issuer. The TSE rules prescribe that any alternative accounting standard may be recognized if TSE deems it to be equivalent to J-GAAP, US-GAAP, or International Financial Reporting Standards.

Sample Wording of the Selling Restriction in the Terms and Conditions of the Notes

Restriction on Transfer of Notes

(1) Japanese Transfer Restriction

The Notes shall not be sold, transferred or otherwise disposed to any person other than Professional Investors, Etc. (*Tokutei Touseika tou*) (“Professional Investors, Etc.”), as defined in Article 2, paragraph (3), Item 2 (b) 2. of the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended) (“FIEA”), except for the transfer of the Notes to the following:

- (a) the Issuer, or the Officer (meaning directors, company auditors, executive officers or persons equivalent thereto) thereof who holds shares or equity pertaining to voting rights exceeding 50% of all the voting rights in the Issuer which is calculated by excluding treasury shares or any nonvoting rights shares (the “Voting Rights Held by All the Shareholders, Etc.” (*Sou Kabunushi Tou no Giketsuken*)) (as prescribed in Article 29-4, paragraph (2) of the FIEA, the same shall apply hereinafter) of the Issuer under his/her own name or another person’s name (hereinafter such Officer shall be referred to as the “Specified Officer” (*Tokutei Yakuin*) in this Paragraph), or a juridical person (excluding the Issuer) whose shares or equity pertaining to voting rights exceeding 50% of the Voting Rights Held by All the Shareholders, Etc. are held by the Specified Officer (the “Controlled Juridical Person, Etc.” (*Hi-Shihai Houjin Tou*) including a juridical person (excluding the Issuer) whose shares or equity pertaining to voting rights exceeding 50% of the Voting Rights Held by All the Shareholders, Etc. are jointly held by the Specified Officer and the Controlled Juridical Person, Etc. (as prescribed in Article 11-2, paragraph 1, Item 2 (c) of the Cabinet Office Ordinance on Definitions under Article 2 of the Financial Instruments and Exchange Act (MOF Ordinance No. 14 of 1993, as amended)); or
- (b) a company that holds shares or equity pertaining to voting rights exceeding 50% of the Voting Rights Held by All the Shareholders, Etc. of the Issuer in its own name or another person’s name.

(2) Matters Notified to the Noteholders and Other Offerees

When (i) a solicitation of an offer to acquire the Notes or (ii) an offer to sell or a solicitation of an offer to purchase the Notes (collectively, “Solicitation of the Notes Trade”) is made, the following matters shall be notified from the person who makes such Solicitation of the Notes Trade to the person to whom such Solicitation of the Notes Trade is made:

- (a) no securities registration statement (pursuant to Article 4, paragraphs 1 through 3 of the FIEA) has been filed with respect to the Solicitation of the Notes Trade;
- (b) the Notes fall, or will fall, under the Securities for Professional Investors (*Tokutei Touseika Muke Yukashoken*) (as defined in Article 4, paragraph 3 of the FIEA);
- (c) any acquisition or purchase of the Notes by such person pursuant to any Solicitation of the Notes Trade is conditional upon such person entering into an agreement providing for the restriction on transfer of the Notes as set forth in (1) above, (i) with each of the Issuer and the person making such Solicitation of the Notes Trade (in the case of a solicitation of an offer to acquire the Notes to be newly issued), or (ii) with the person making such Solicitation of the Notes Trade (in the case of an offer to sell or a solicitation of an offer to purchase the Notes already issued);
- (d) Article 4, paragraphs 3, 5 and 6 of the FIEA will be applicable to such certain solicitation, offers and other activities with respect to the Notes as provided in Article 4, paragraph 2 of the FIEA;
- (e) the Specified Securities Information, Etc. (*Tokutei Shouken Tou Jouhou*) (as defined in Article 27-33 of the FIEA) with respect to the Notes and the Issuer Information, Etc. (*Hakkosha Tou Jouhou*) (as defined in Article 27-34 of the FIEA) with respect to the Issuer have been or will be made available for the Professional Investors, Etc. by way of such information being posted on (i) the web-site maintained by the TOKYO PRO-BOND Market (<http://www.jpx.co.jp/english/equities/products/tpbm/announcement/index.html> / <http://www.jpx.co.jp/english/equities/products/tpbm/issues/index.html>), or (ii) the Issuer’s web-site that discloses the information concerning the respective Issuers (the URL of which will be made available on the web-site maintained by the Tokyo PRO-BOND Market above), in accordance with Articles 210 and 217 of the Special Regulations of Securities Listing Regulations Concerning Specified Listed Securities of the Tokyo Stock Exchange; and
- (f) the Issuer Information, Etc. will be provided to the Noteholders or made public pursuant to Article 27-32 of the FIEA.