

AMBIF Bond, Note, and *Sukuk* Issuance: Relevant Features in Malaysia



In addition to the market features corresponding to the AMBIF Elements, a number of general market features of AMBIF bond, note, and *sukuk* issuance to Sophisticated Investors in the Malaysian 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 a country 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 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 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.

Malaysian law permits the use of governing laws or jurisdictions other than Malaysian law in contracts, provided that such provisions do not contravene any existing laws of Malaysia. The decision on the governing law and jurisdiction for bonds, notes, or *sukuk* issued to Sophisticated Investors in Malaysia tends to be investor driven. The key question in the setting of the underlying law 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.

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.

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.

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

Credit Rating

In principle, all bonds, notes, and *sukuk* issued in Malaysia and denominated in Malaysian ringgit require a credit rating from a credit rating agency approved by the SC.

Under the Lodge and Launch Guidelines (Chapter 2), FCY-denominated issuances do not require a credit rating. Since August 2014, the SC has given issuers the flexibility not to have MYR-denominated issuances aimed at Sophisticated Investors rated, but this concession comes with the limitation that such PDS and *sukuk* cannot be traded for at least 2 years.

The complete removal of the mandatory credit rating requirements for bonds, notes, and *sukuk* issued in the Malaysian market will take effect in 2017.

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* issue must be made available to the SC upon an application to issue, offer, or invite to subscribe or purchase PDS or *sukuk*.

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.

Selling and Transfer Restrictions

Selling and transfer restrictions for bonds, notes, and *sukuk* intended for professional investors (Sophisticated Investors) only are well defined in Malaysia, and are expressed and observed through a number of regulations and practices in the market.

Prior to issuance, the issuer or its agents are required to make explicit reference to Schedules 6, 7, and 9 of the CMSA in all offer documents and related correspondence to Sophisticated Investors, including the PTC of a proposed bond, note, or *sukuk* issuance to Sophisticated Investors. A similar reference, to Schedules 6 and 9 of the CMSA only, will have to be present in all documentation and disclosure items after the bond, note, or *sukuk* issuance.

At the same time, the marketing or offers for sale and distribution of bonds, notes, and *sukuk* aimed at Sophisticated Investors may only be undertaken by Malaysian legal entities with a Capital Market Services License, or holders of a Capital Market Services Representative's License, regardless of (i) whether the bonds, notes, or *sukuk* were issued by domestic or foreign issuers; and (ii) where the bonds, notes, or *sukuk* were originally issued. This license is awarded by the SC to eligible institutions and individual dealers. Licensing requirements

include the commitment of the institution and individual holders to observe any applicable selling restrictions.

A bond, note, or *sukuk* listed for profiling under the BMS Exempt Regime, by its nature, would be limited to Sophisticated Investors at issuance or in secondary market transactions. These limitations would also need to be observed by transaction intermediaries or Capital Market Services License holders, as per the prevailing regulations.

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 Malaysian market. In addition to MTN programs for bonds and notes, the market also features Islamic MTN programs for the issuance of *sukuk*.

In the Lodge and Launch Guidelines published in March 2015, note issuance programs are referred to as “debt programmes,” with the same meaning as described above.²

Issuance and Trading Platforms for Bonds, Notes, and *Sukuk*

The Fully Automated System for Issuing/Tendering (FAST) is a system designed to facilitate the primary issuance of all debt securities, including *sukuk*, and money market instruments approved by BNM and/or relevant authorities that are either issued via tender or on a private placement basis.

FAST also provides the following information via terminal access for its members:

1. daily indicative yield to maturity for government and BNM papers,
2. weekly indicative yield to maturity for PDS, and
3. Malaysian Government Securities indicative prices.

The Electronic Trading Platform (ETP) is an electronic trade reporting and trading platform for the domestic bond market, and operated by Bursa Malaysia Bonds (Bursa Bonds).

Among other features, the ETP provides the following facilities:

1. mandatory reporting of all secondary bond market transactions;
2. an electronic order matching platform for the matching of bid and ask quotes for Malaysian Government Securities, Government Investment Issues, and corporate issues; and

² Securities Commission Malaysia. Lodge and Launch Framework. <http://www.sc.com.my/legislation-guidelines/lodge-and-launch-framework/>

3. an advertisement and a negotiation platform where dealers can advertise and negotiate for one-to-one deals for all debt securities and *sukuk*.

Any person may apply to Bursa Bonds to access information on the ETP. Membership to deal securities on the ETP is open only to money brokers and applicants registered for the purpose of dealing in debt securities. The ETP interfaces with FAST.

Information Dissemination and Reference Pricing via BPAM

At the same time, BPAM captures, calculates, and makes available reference pricing for all bonds, notes, and *sukuk* issued and traded in the Malaysian market, regardless whether OTC or on exchange. This includes pricing to maturity and information on these bonds, notes, and *sukuk*, often including issuance documentation and disclosure items. BPAM pricing data are available to the public via its website and are disseminated to securities data vendors and subscribers in customized formats. Non-market participants, such as foreign investors, typically obtain Malaysian bond, note, and *sukuk* information via BPAM.

Bond Trustee and Trust Deed

The SC prescribes the use of a trust deed—and appointment of a bond trustee—for a bond, note, or *sukuk* issuance, in accordance with underlying provisions in the CMSA, Sections 258ff. Certain exceptions to this requirement exist, such as when the bond, note, or *sukuk* issuance is offered exclusively to foreign investors or other entities specifically mentioned in Schedule 8 of the CMSA.

The bond trustee is to be appointed by the Principal Adviser.

The need for a trust deed is prescribed by the SC in Chapter 2 (Trust Deed and Trustee) of the Lodge and Launch Guidelines. At the same time, the minimum content requirements of the trust deed are detailed separately in the Guidelines on Trust Deeds, 2011.

Bond trustees must be registered with the SC, and are licensed trust companies or public companies. Bond trustees are expected to be involved in the bond, note, or *sukuk* issuance documentation process.

Principal Adviser

Principal Adviser is the term used in the Malaysian market—in the Lodge and Launch Guidelines and other relevant regulations, in particular the Principal Adviser Guidelines, 2009 issued by the SC—for the lead underwriter or arranger of a bond, note, or *sukuk*. Only institutions registered with the SC and listed in the Principal Adviser Guidelines (available on the SC website) can act as Principal Adviser.