III

AMBIF Bond and Note Issuance: Relevant Features across ASEAN+3 Markets

In addition to the AMBIF Elements, a number of specific features of individual markets relevant for bond and note issuance to professional investors have been found to generate stakeholder interest and influence their activities.

The features described in this chapter have been identified as the result of consultations with potential and existing issuers, professional investors, and market intermediaries in the course of ABMF Phase 3. Therefore, they reflect actual professional bond market practices and are suitable for inclusion in AMBIF.

Governing Law and Jurisdiction

Governing law and the jurisdiction for specific service provisions related to bond and note issuance has relevance for 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 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.

From a practical perspective, the governing law and jurisdiction of a bond or note issuance are determined by negotiations and an agreement between the parties involved in the issuance. In case the parties involved agree on a governing law different from that of the market in which the issuance is taking place, the parties would also have to specifically determine the jurisdiction of a court in which provisions of the bond or note issuance (e.g., settlement agency) could be enforced and any disputes would be heard and decided. Some markets in ASEAN+3 may specify which governing laws or jurisdictions for a bond or note issuance may be employed in addition to the laws of that market. Table 9 displays a comparative view of the findings on governing law and jurisdiction across ASEAN+3 markets.

In discussions with potential issuers and other stakeholders, the significance of setting the governing law and applicable jurisdiction(s) of a bond or note issuance was reiterated, in particular if the issuer has already raised bond or note issuance documentation under a specific governing law and is hoping to reuse said documentation. In addition, investor demand or the eligibility for certain investors to invest in bonds and notes only if issued under the laws or jurisdiction of the investors' own domicile, for example, may drive the application of certain governing laws or jurisdiction(s).

Table 9: Comparative View of Governing Law and Jurisdiction across AMBIF Markets

Market	Governing Law and Jurisdiction
Hong Kong, China	Hong Kong Basic Law, and the stated views of the relevant regulatory authorities and market institutions, permit the use of a governing law or jurisdiction 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.
Japan	Governing law and jurisdiction, with respect to the Terms and Conditions of the Notes, may be agreed among the contracting parties, subject to relevant provisions in applicable laws and regulations. In cases of bonds and notes settled in Japan, at present, JASDEC requires that the Terms and Conditions of the Notes shall be governed by Japanese law.
Malaysia	Malaysian law permits the use of a governing law or jurisdiction 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, and *sukuk* (Islamic bonds) 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 a 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 when the contracting parties choose a governing law other than Malaysian law for the contract, it is expected that Malaysian law would prevail as the law specific to issuance- and settlement-related matters.
Philippines	The civil code of the Philippines permits the use of a governing law or jurisdiction other than the Philippines in contracts, provided that such provisions do not contravene any existing Philippine laws. Should the parties involved in a bond or note issuance choose to use Philippine law, the jurisdiction of the issuance would fall to Philippine courts by default. If, in contrast, issuance parties agree on another governing law, the parties would also have to specifically determine the jurisdiction of a court in which provisions of the bond or note issuance (e.g., settlement agency) could be enforced and any disputes would be heard and decided. In the case of issuance of PHP-denominated bonds or notes in the Philippines, even when the contracting parties choose a governing law other than Philippine law for the contract, it is expected that Philippine law would prevail as the law specific to (at least) issuance- and settlement-related matters.
Singapore	In Singapore, it is generally accepted that contracting parties can determine the jurisdiction of the governing law, which is not restricted to Singapore law. Also, in the case of a profile listing on the SGX Wholesale Bonds market, the governing law and jurisdiction for the bond or note issuance is left to the parties involved. Only the listing agreement is required to be executed under Singapore law.
Thailand	Thai law accepts the contracting parties' right to agree on the governing law or jurisdiction for contractual arrangements. The legal basis is contained in the Conflict of Laws Act B.E. 2481, 1938. At the same time, the governing laws or jurisdictions available for a bond or note issuance in Thailand are subject to approval by the Minister of Finance. Should the parties involved in a bond or note issuance choose to use Thai law, the jurisdiction of the issuance would fall to Thai courts by default. If, in contrast, issuance parties agree on another governing law, the parties would also have to specifically determine the jurisdiction of a court in which provisions of the bond or note issuance (e.g., settlement agency) could be enforced and any disputes would be heard and decided. In the case of issuance of THB-denominated bonds and notes in Thailand, including when the contracting parties choose governing law other than Thai law for the contract, it would still be natural to elect Thai law as the law specific to issuance- and settlement-related matters.

AMBIF = ASEAN+3 Multi-Currency Bond Issuance Framework, JASDEC = Japan Securities Depository Center, MYR = Malaysian ringgit, PHP = Philippine peso, SGX = Singapore Exchange, THB = Thai baht.
Source: ABMF SF1.

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 the relevant regulatory authorities for a submission of required information in English, in addition to the local language and formats, may be sought.

In the participating markets, English is generally accepted for the submission of the SSF and the standard issuance documentation for an offering to professional investors such as an information memorandum (Table 10).

Credit Rating

As a concession to the issuance of bonds and notes to professional investors, a credit rating for such bonds and notes is not required for issuance approvals and listing requirements in a number of markets. This also applies to cases in which the bonds or notes are issued by a government or with a government guarantee. However, in cases of a foreign issuer offering debt securities in a local currency, in a number of markets the authorities responsible for the applicable approvals may stipulate the need for a credit rating from a recognized credit rating agency. Each market has its own accreditation or recognition process for credit rating agencies.

Table 10: Comparative View of the Language of Documentation and Disclosure Items across AMBIF Markets

Market	Language of Documentation and Disclosure Items
Hong Kong, China	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.
Japan	Documentation in English is accepted by TPBM.
Malaysia	In Malaysia, contracts, bond, note, and *sukuk* (Islamic bond) issuance documentation and disclosure items—as well as all applications, approvals, and correspondence with regulatory authorities and market institutions—can be in English.
Philippines	In the Philippines, an English translation shall be used for all documentation related to the issuance of bonds or notes.
Singapore	English is one of the four official languages of Singapore, along with Chinese, Malay, and Tamil. All contracts, bond, and note issuance documentation and disclosure items, applications, approvals, and correspondence with regulatory authorities and market institutions, if so required, must be in English.
Thailand	Under Thai law, it is expected that a language other than Thai would be accepted for the purpose of contractual documents and official submissions. At this stage, foreign issuers are allowed to use official submissions or the filing of applications and disclosure items in English. However, to enable this feature (English version) to Thai issuers offering bonds and notes under PP-AI in multiple jurisdictions, the SEC is aiming to revise related regulations in 2015.

AMBIF = ASEAN+3 Multi-Currency Bond Issuance Framework; PP-AI = Private Placement to Accredited Investors; SEC = The Securities and Exchange Commission, Thailand; TPBM = TOKYO PRO-BOND Market.
Source: ABMF SF1.

At the same time, many market participants prefer to have credit rating(s) in place because even professional investors may not be able to replicate in-house the credit assessment process undertaken by the credit rating agencies, or their investment mandates prescribe they invest in rated assets only.

Most markets accept credit ratings from established international credit rating agencies in addition to domestic credit rating agencies (Table 11). In markets without domestic credit rating agencies, issuers and investors rely exclusively on international credit ratings. In the course of ABMF Phase 3, it was also found that only a few markets recognize credit rating agencies from other markets in the region at this point in time.

Table 11: Comparative View of Credit Rating Requirements across AMBIF Markets

Market	Credit Rating Requirements
Hong Kong, China	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 satisfies 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.
Japan	Note issuance programs and 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 itself needs to be disclosed but the level of the rating is not an eligibility criterion for TPBM. With regard to bonds and notes issued by a foreign government or local government (domestic and foreign), guaranteed by a central or local government (domestic or foreign), or issued by certain financial institutions recognized by the TSE, a credit rating is not required. Credit rating agencies recognized by TSE-TPBM include (i) Standard & Poor's, (ii) Moody's, (iii) Fitch Ratings, (iv) Rating and Investment Information, (v) Japan Credit Rating Agency, and (vi) RAM Rating Services Bhd.
Malaysia	In principle, all bonds, notes, and *sukuk* (Islamic bonds) 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 rated MYR-denominated issuances aimed at Sophisticated Investors, 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*. Domestic credit ratings are available from Malaysian Rating Corporation and RAM Rating Services Bhd, both of which are registered with the SC, pursuant to the Guidelines on Registration of Credit Rating Agencies, 2011.

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Table 11 continued

Market	Credit Rating Requirements
Philippines	Bonds and notes to be listed or enrolled on PDEx require a credit rating in line with the credit rating requirements stipulated by the Securities and Exchange Commission and BSP. In its Memorandum Circular No. 7 released in March 2014, the Securities and Exchange Commission announced the Guidelines on the Accreditation, Operations and Reporting of Credit Rating Agencies, which govern the two domestic credit rating agencies, Philippine Rating Services (PhilRatings) and Credit Rating and Investors Services Philippines, in addition to an acceptance of international credit rating agencies. Under BSP regulations, unsubordinated debt requires a rating of at least AA on the Philippine domestic credit rating scale. PhilRatings is the first domestic credit rating agency to be recognized by the BSP, based on minimum eligibility criteria for bank supervisory purposes. The BSP also accepts credit ratings from Fitch Ratings, Moody's, and Standard & Poor's, as well as Fitch Singapore. PDEx accepts credit ratings from a credit rating agency duly recognized by the applicable regulatory authorities. Unrated bonds and notes are possible under present regulations and may be listed on the PDEx Qualified Board; however, it has been observed that potential AMBIF investors may prefer for bonds and notes to have a credit rating.
Singapore	Bonds and notes issued to Institutional Investors in the Singapore domestic bond market do not require a credit rating. At the same time, a credit rating is one of three possible alternative criteria for eligibility to list a bond or note aimed at Institutional Investors on the Wholesale Bonds market on SGX. Most issuers do not choose to use the credit rating criterion when considering listing on SGX. The majority of bonds and notes issued in the Singapore domestic bond market, typically denominated in Singapore dollars, are unrated.
Thailand	Under SEC regulations, a credit rating for PP-AI issuances is not mandatory. However, in cases of a foreign issuer offering THB-denominated debt securities under the Baht Bond concept to Accredited Investors, PDMO requires a credit rating in every case, except when the bonds or notes are issued by a government or with a government guarantee. Market participants may still prefer to have a credit rating in place since many market participants designated as professional investors may not be able to replicate in-house the credit assessment process undertaken by the credit rating agencies. If a rating for an issuer and/or a PP-AI issuance is required between the parties involved, only the rating of a credit rating agency approved by the SEC will be acceptable in the Thai market. According to the Notification of the Office of the Securities and Exchange Commission No. SorChor. 7/2555 Re: Credit Rating Agencies Approved to Issue Credit Rating for Instruments Subject to Rules Concerning Issuance and Offer for Sale and Investment of Funds, SEC-approved credit rating agencies include those established under Thai law with approval from the SEC and the following credit rating agencies established under foreign law: (i) Standard & Poor's, (ii) Moody's, (iii) Fitch Ratings, and (iv) Rating and Investment Information. No regional credit rating agencies, other than those mentioned above, have been approved by the SEC. Ratings from Rating and Investment Information are not accepted by PDMO.

AMBIF = ASEAN+3 Multi-Currency Bond Issuance Framework; ASEAN+3 = Association of Southeast Asian Nations plus the People's Republic of China, Japan, and the Republic of Korea; BSP = Bangko Sentral ng Pilipinas; FCY = foreign currency; HKEx = Hong Kong Exchanges and Clearing Limited; JPY = Japanese yen; MYR = Malaysian ringgit; PDEx = Philippine Dealing & Exchange Corp.; PDMO = Public Debt Management Office; PDS = private debt securities; PP-AI = Private Placement to Accredited Investors; SC = Securities Commission Malaysia; SEC = The Securities and Exchange Commission, Thailand; SGX = Singapore Exchange; THB = Thai baht; TPBM = TOKYO PRO-BOND Market; TSE = Tokyo Stock Exchange.
Source: ABMF SF1.

Selling and Transfer Restrictions

One key aspect of the regulatory mandate in the region's markets is the protection of retail or general investors in each jurisdiction. Policy bodies and regulatory authorities exercise their mandate through a combination of legislation and rules for the securities market. The key point of these regulations is the prevention of the sale or offer of securities, including bonds and notes, to investors who are considered unable to make complex investment decisions. In recognition of these important considerations, AMBIF has been devised from the outset with a focus on professional bond markets and market segments in ASEAN+3 economies.

Selling and transfer restrictions for the issuance or offer for sale or subscription of bonds and notes to professional investors are well defined in the law, supplementary regulations, and listing rules in participating jurisdictions. Methods, qualifications, and conditions for these selling and transfer restrictions may vary from market to market (Table 12), but all result in obligations by the market's professional participants to apply these rules and regulations. This principle is well understood and supported by professional market participants.

At the same time, many markets do not directly regulate interactions among professional market participants. While professional investor concepts are defined in legislation or regulations in most jurisdictions, these regulations do not contain specific limitations on their activities with professional counterparties. Instead, in addition to the licensing of professional institutions, the governance of market activities is often delegated to a suitable self-regulatory organization, such as a market association, that governs its members with the help of a code of conduct expected to be observed in the course of daily business. All these provisions work on the basis that professional participants are in a position to make their own decisions based on available information, conditions, and circumstances in the marketplace. This applies across all markets.

For a better illustration, the list below includes a number of basic mechanisms for effective selling and transfer restrictions that have been observed in participating AMBIF markets, often in combination with one another:

1. A clear-cut definition and rules on selling and transfer restrictions for the professional market exist in the law, in supplementary regulations or listing rules, as may be applicable.
2. These provisions are publicly available to investors and market participants, together with the Terms and Conditions of the Notes.
3. A description of the selling and transfer restrictions is mentioned and available in the Terms and Conditions of the Notes.
4. In the case of physical certificates, the selling and transfer restrictions are printed on the certificates in a prominent and easily recognizable manner.
5. These bonds and notes are being issued to, or traded through, licensed dealers and/or underwriters.
6. The following practice is shared among market participants: the solicitation and offer for sale or subscription by the seller must be made only to professional investors and persons reasonably believed to be professional investors, and the seller must announce to professional investors that they are selling by employing such exemptions or special rules exempted from full disclosure requirements and/or registration with the regulatory authorities.
7. An appropriate enforcement for rule violations is available.

Table 12: Comparative View of Selling and Transfer Restrictions across AMBIF Markets

Market	Selling and Transfer Restrictions
Hong Kong, China	Selling and transfer restrictions for bonds and notes intended for professional investors are well defined in the Laws of Hong Kong, 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 Code of Conduct for Persons Licensed by or Registered with the SFC (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.
Japan	The FIEA so far requires that a contract on transfer restrictions should be signed between the issuer and the person (Professional Investor) to purchase the bonds or notes and between the solicitor or offeror (Securities Company) and the purchaser or acquirer. The FIEA also provides the requirement of notification to the purchaser to the effect that 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 may be sold only to Professional Investors. In addition, a contract on transfer restrictions and notification with a Professional Investor for all TPBM-related bond and note transactions may be allowed in current market practice. (For further details, please refer to Q55 and Q56 in the Q&A section on the TOKYO PRO-BOND Market website.[a]) 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. 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 related to the definition stipulated in the FIEA. According to the FSA proposal, in addition to 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, 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.

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Table 12 continued

Market	Selling and Transfer Restrictions
	One possible combination would be the description of selling and transfer restrictions and the above-deemed acknowledgment 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 above-mentioned Article 12.
Malaysia	Selling and transfer restrictions for bonds, notes, and *sukuk* (Islamic bonds) intended for professional investors (Sophisticated Investors) are well defined, expressed, and observed through a number of regulations and practices in the Malaysian 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 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 offer 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 and 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.
Philippines	Selling and transfer restrictions for the issuance of bonds or notes to professional investors are well defined in the identified professional market segment in the Philippines (Qualified Buyers and Qualified Securities). Pursuant to SRC Sections 9 and 10, the IRR published by the SEC prescribe a template and specific provisions on the use of that template, and define the selling and/or transfer restrictions when issuing bonds or notes to Qualified Buyers. To further ensure that an exemption claimed by an issuer under Section 10.1 of the SRC when issuing bonds or notes aimed at Qualified Buyers, the SEC also looks to the underwriter—licensed by the SEC—to observe the applicable provisions and selling and transfer restrictions under the law. In all offer documents and related correspondence to Qualified Buyers, including the term sheet of a proposed bond or note issue, an issuer must make explicit reference to SRC Section 10.1 (L) and give its commitment that said offer is limited to Qualified Buyers, thereby constituting an Exempt Transaction under the law. The IRR related to SRC Section 10.1 (1.c) prescribe the following statement in bold-face and prominent type: > The securities being offered or sold have not been registered with the Securities and Exchange Commission under the Securities Regulation Code, any future offer or sale thereof is subject to registration requirements under the Code unless such offer or sale qualifies as an Exempt Transaction.[b] In addition, appropriate selling or transfer restrictions will need to be printed on the actual issued instrument, typically global or jumbo certificate(s) in bold font if certificates are to be issued. However, Philippine company law does not require the physical issuance of certificates.

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Table 12 continued

Market	Selling and Transfer Restrictions
	If a bond or note is listed or enrolled on PDEx, the observance of applicable selling and transfer restrictions is part of the explicit warranties that issuers and participants give to PDEx when signing up. PDEx also requires all its listing or enrollments to be dematerialized; hence, no certificates means that no explicit selling restrictions will need to be printed. There are no distinctions between domestic issuers and nonresident issuers with regard to selling or transfer restrictions and their observance.
Singapore	Selling and transfer restrictions for bonds and notes intended for professional investors are well defined in Singapore, in both regulations and listing rules for the professional Wholesale Bonds market on SGX. Intermediaries for trades in bonds and notes listed on the Wholesale Bonds market will have to establish in their know-your-customer procedures whether or not an investor qualifies as an Institutional Investor. On SGX, Wholesale Bonds market listings offer no access to retail investors. Listing rules include the adherence of all issuers and underwriters to these restrictions. In addition, SGX participant institutions must confirm that they will observe all applicable rules and regulations. As a matter of market practice, documentation for bonds and notes aimed at Institutional Investors typically carry references to the applicable sections of the SFA and SGX Listing Rules and other relevant regulations. While no specific wording is prescribed in the law or rules, the market tends to follow a standard format for professional bond issuance documentation.
Thailand	Selling and transfer restrictions for the issuance of bonds and notes to professional investors are well defined for PP-AI issuance in the Thai market. Pursuant to the 2012 Notification of the Securities and Exchange Commission No. KorChor. 9/2555 Re: Determination of Definitions of Institutional Investors and High Net Worth Investors, any issuance to professional investors using the concessions for PP-AI issuance on disclosure and regulatory processes must indicate that a bond or note issuance is a PP-AI (including foreign institutional investors) in all offer documents, including the term sheet of a proposed bond or note issue, and related correspondence.

AMBIF = ASEAN+3 Multi-Currency Bond Issuance Framework; ASEAN+3 = Association of Southeast Asian Nations plus the People's Republic of China, Japan, and the Republic of Korea; BMS = Bursa Malaysia Securities; CMSA = Capital Market and Services Act; FIEA = Financial Instruments and Exchange Act; FSA = Financial Services Agency; HKEx = Hong Kong Exchanges and Clearing Limited; IRR = Implementing Rules and Regulations; OTC = over-the-counter; PDEx = Philippine Dealing & Exchange Corp.; PP-AI = Private Placement to Accredited Investors; PTC = principal terms and conditions; Q&A = questions and answers; SC = Securities Commission Malaysia; SEC = Securities and Exchange Commission; SFA = Securities and Futures Act; SFC = Securities and Futures Commission; SFO = Securities and Futures Ordinance; SGX = Singapore Exchange; SRC = Securities Regulation Code; SSI = Specified Securities Information; TPBM = TOKYO PRO-BOND Market.

[a] TOKYO PRO-BOND Market. Q&A about the TOKYO PRO-BOND Market. http://www.jpx.co.jp/english/equities/products/tpbm/outline/tvdivq00000006xw-att/201503Q&AinEnglish.pdf

[b] Securities and Exchange Commission. Amended Implementing Rules and Regulations of the Securities Regulation Code. http://www.sec.gov.ph/laws/irr/AmendedIRRfinalversion.pdf

Source: ABMF SF1.

Note Issuance Programs

Feedback from potential issuers in the region led to the inclusion of note issuance programs in the description of AMBIF. Issuers appeared very keen on the use of medium-term note (MTN) programs, an effective instrument in most bond markets, due to their flexibility and because funding demands for working capital, for example, may be primarily mid-term in nature. As a practical method of corporate funding in both domestic and international markets, note issuance programs are often preferred by issuers for the ability to tap markets on short notice. For issuers with a regional presence, a note issuance program under AMBIF would allow access to a number of target markets with a single set of defined issuance documentation and disclosure, through the use of the SSF.

AMBIF promotes the use of note issuance programs, such as the MTN format, because they give funding flexibility to issuers and represent the most common format of bond and note issuance in the international bond market. This means that potential issuers, investors, and intermediaries are likely to be familiar with note issuance programs and related practices, making AMBIF comparable to the relevant practices in the international bond market. At the same time, it is expected that potential issuers can benefit from reusing or adopting existing documentation or information on disclosure items.

The ability of potential issuers to use note issuance programs under AMBIF differs across participating markets (Table 13). While some of the more mature markets regularly see note issuance under MTN programs, often due to the more international participation in these markets, other jurisdictions are now studying the conditions and concessions for introducing note issuance programs, particularly MTN programs. Where approval of an issuance amount for nonresident issuers is required, the use of note issuance programs may be limited, since such approvals may not be able to correspond to the intended issuance amounts under the program for the duration of the approval period.

Bond Trustee, Bondholder Representative, or Bond Manager

Since its work began in Phase 1, ABMF has been conscious of the need for strong and well-defined investor protection in the region's bond markets, which is one of the key mandates of the securities market and prudential regulators in each jurisdiction. In its Phase 1 Report, ABMF published a comparative analysis of investor protection mechanisms in each jurisdiction, with a focus on those mechanisms aimed at protecting retail or general investors.

Once the AMBIF proposal was defined, attention turned to the question to what extent such investor protection mechanisms would be required by the regulatory authorities or, in turn, by the professional investors themselves in the context of AMBIF, which advocates a professionals-only bond market. One of the key subjects in this regard was the need to appoint a representative of the bondholders who can act independently of the issuer and its agents. In the markets' relevant laws and regulations, this function is variously defined as a bond or general trustee, bondholder representative, or bond manager. For the purpose of this report, the term bondholder representative shall be used.

While most markets prescribe the need for a bondholder representative to be appointed in the context of a bond or note issuance, relevant provisions for the professional markets in each ASEAN+3 economy allow for concessions under certain circumstances or outright exemptions. At the same time, the actual appointment of a bondholder representative for a given bond or note issue was found to be determined largely by the target investor universe, regardless of market of issuance. Prudential regulations for professional investors, such as mutual or pension funds, often limit the investment of these institutions to assets that have specific protection features, including the use of a bondholder representative and regulatory price-finding mechanisms. As such, issuers targeting mutual and pension fund investors would be more inclined to appoint a bondholder representative.

Table 14 gives a brief overview of the applicable provisions for bondholder representatives across the participating markets.

Table 13: Comparative View of Note Issuance Programs across AMBIF Markets

Market	Note Issuance Program
Hong Kong, China	Note issuance programs are well established and widely accepted in the Hong Kong, China market, and are the most preferred 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.
Japan	Note issuance programs are well established and widely accepted in TPBM. Program information is equivalent to the euro MTN 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 rated and a candidate for lead managing underwriter is listed. Once this is done, one can flexibly issue and list bonds on TPBM at the time of issuance. Program information is basically treated as the SSI 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.
Malaysia	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* (Islamic bonds). In the Lodge and Launch Guidelines published in March 2015, note issuance programs are referred to as "debt programmes."
Philippines	At this stage, the issuance of PHP-denominated domestic bonds and notes to professional investors via an MTN program is not evident in the Philippine market. However, a listing or enrollment on PDEx, for example, would be possible as USD-denominated note issuance programs have been evident in the Philippines for some time. In addition, a shelf-registration concept exists, though this is not directly comparable to shelf-registration concepts typically practiced in other markets.
Singapore	Note issuance programs are well established and widely accepted in the Singapore market. The legal basis for the use of note issuance programs can be found in Section 240A of the SFA, which provides for a debenture issuance program.
Thailand	At this stage, the issuance of domestic bonds and notes to professional investors via an MTN program is not evident in the Thai market. However, Thailand has an MTN-like program in which the issuer who has updated publicly available information (e.g., a Thai listed company or a foreign company that has submitted updated information to the SEC) can refer to such information in the offering circular, instead of submitting the whole document. In addition, the cooling-off period for the issuance under PP-AI is only 1 business day. However, PDMO cannot grant a blanket approval to a foreign issuer for the maximum issuance amount in any given period under the MTN-like note issuance program, due to the limited quota available. Therefore, an approval will be given on an issuance-by-issuance basis. The SEC is in the process of evaluating the benefits of bond and note issuance via an MTN-like program similar to international markets.

AMBIF = ASEAN+3 Multi-Currency Bond Issuance Framework; FIEA = Financial Instruments and Exchange Act; MTN = medium-term note; PDEx = Philippine Dealing & Exchange Corp.; PDMO = Public Debt Management Office; PHP = Philippine peso; PP-AI = Private Placement to Accredited Investors; SEC = The Securities and Exchange Commission, Thailand; SFA = Securities and Futures Act; SFO = Securities and Futures Ordinance; SSI = Specified Securities Information; TPBM = TOKYO PRO-BOND Market; USD = US dollar.
Source: ABMF SF1.

Table 14: Comparative View of Bondholder Representatives in AMBIF Markets

Market	Bondholder Representative
Hong Kong, China	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.
Japan	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.
Malaysia	The SC prescribes the use of a trust deed—and appointment of a bond trustee—for a bond, note, or *sukuk* (Islamic bond) issuance, in accordance with the 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, which must be registered with the SC, are licensed trust companies or public companies. Bond trustees are expected to be involved in the bond, note, or *sukuk* issuance documentation process.
Philippines	Under the PDEX Listing Rules (7.3.8), debt securities to be listed or enrolled on PDEx must have a Facility Agent (or trustee). The issuer needs to appoint the Facility Agent. The duties of a Facility Agent follow for the most part the tasks normally associated with a bond trustee or bondholder representative.
Singapore	The appointment of a bond trustee for professional bond and note issuances is optional, but the majority of bonds and notes listed for profiling on the SGX Wholesale Bonds market feature a bond trustee. This is driven by market practice and conventions with regard to targeted Institutional Investors who are subject to prudential regulations, such as insurance companies and mutual and pension funds. Trustees for bonds and notes may be trustee companies as well as financial institutions.
Thailand	SEC regulations require the appointment of a bondholder representative only if a bond or note is offered through a public offer. This is not mandatory for PP-AI issuances. However, PDMO requires the appointment of a bondholder representative for bonds and notes issued by a foreign issuer under the Baht Bond program in every case. The SEC does not require the issuer to appoint a bondholder representative when a bond or note issued in another jurisdiction is offered for sale in the PP-AI market. According to the law, the issuer shall appoint the bond or debenture holder representative in Thailand during the tenure of the bond for the benefit of the holders. The bondholder representative calls for bondholder meetings or undertakes all such activities as may be required on behalf of the bondholder, including in the case of a default. Bondholder representatives typically are banks or financial institutions, and have specific fiduciary and fiscal responsibilities under Thai law.

AMBIF = ASEAN+3 Multi-Currency Bond Issuance Framework; CMSA = Capital Market and Services Act; HKEx = Hong Kong Exchanges and Clearing Limited; MTN = medium-term note; PDEx = Philippine Dealing & Exchange Corp.; PDMO = Public Debt Management Office; PP-AI = Private Placement to Accredited Investors; SEC = The Securities and Exchange Commission, Thailand; SC = Securities Commission Malaysia; SGX = Singapore Exchange; TPBM = TOKYO PRO-BOND Market.
Source: ABMF SF1.