V. The AMBIF Regulatory Process

AMBIF is designed as an intra-regionally standardized bond issuance framework that will allow bond issuers in any participating economy, whether they join the framework at its inception or a later date, to issue bonds in any other participating location with standardized or streamlined documentation and information disclosure requirements, subject to compliance with all domestic legal and regulatory requirements.

A prerequisite for the implementation of AMBIF is agreement among the policy bodies and regulatory authorities representing the individual jurisdictions on the concept and components of AMBIF in a manner acceptable to the authorities of all ASEAN+3 economies. The format for such an agreement has not yet been determined and is still being discussed among the policy bodies and regulatory authorities participating in ABMF.

Need for a Bottom-up Approach

ABMF acknowledges that, unlike Europe, Asia has no formal common institutions to lead efforts aimed at the harmonization of practices, whether in securities markets or the economy at large. The establishment of the ASEAN Economic Community (AEC) by 2015 is one step in this direction, though it is not directly employable by SF1 due to the larger domain of ASEAN+3. The lack of overarching institutions makes the use of a top-down approach—such as a strict definition of AMBIF requiring direct adoption in each member jurisdiction—inappropriate.

Instead, a bottom-up approach is seen as the most suitable for ASEAN+3 and the implementation of AMBIF. A bottom-up approach could draw out the agreement process since individual elements would need to be defined and agreed on separately, is seen as more practical in terms of actual implementation across ASEAN+3 economies, given their differing stages of bond market development. The intention would be to address the easier issues first, and then move on to more complex issues in a step-by-step fashion in line with the basic approaches employed by ABMF. As a result, the scope and areas for standardization would remain limited but focused.

Review of Approaches for the Regulatory Process

SF1 members have over the course of ABMF Phase 2 reviewed and discussed a number of possible approaches to relevant agreements between the participating economies, trying to identify the most suitable regulatory process and taking into consideration existing market-specific regulatory processes and the presence of multiple regulators.

It quickly became apparent that a single existing regulatory process could not be easily adopted by all participating economies since the regulatory processes presently employed among regulatory authorities in ASEAN+3 economies differ widely and make use of different terminology. **Table 7** gives a brief overview of the varying processes and terms used in the context of bond issuance.

The individual approaches range from regulatory processes that do not directly involve regulatory authorities, provided all prescribed activities and formats are complied with, and merely require

Table 7: Examples of Regulatory Processes relating to Bond Issuance across ASEAN+3 Jurisdictions

Economy	Market	Action	What	To	Purpose
People's Rep. of China	Inter-Bank Bond Market	Filing	Issue application	NAFMII	Registration
Hong Kong, China	HKEx	Submit	Listing application	HKEx	Listing
Indonesia	Private Placement (typically MTN)	Periodic Submission	Information on assets held in KSEI, including MTN	IFSA[a]	Record-keeping only
Japan	Public Offering Market	Register	Securities Registration Statement (SRS)	J-FSA	
	TOKYO PRO-BOND Market	Submit	Specified Securities Information	TSE	Listing
Republic of Korea	QIB Market	Register	Securities Information	KOFIA	Filing
Malaysia	Excluded Offers (BM (listings only)	Deposit	Information Memorandum	SC MY	Approval
Philippines	Public Offering Market	Submit	Securities Registration Statement (SRS)	SEC	Rendering effective
Singapore	Public Offering Market	Lodge	Prospectus	MAS	Approval
	SGX Listing Market	Submit	Listing Application – Offering Memorandum etc.	SGX	Listing
Thailand	Public Offering	Submit	Registration Statement – Full Form Application	MOF[b] SEC	- Approval - Filing
	Private Placement (AI)	Submit	Registration Statement – Short Form Application	MOF[b] SEC	- Approval - Filing

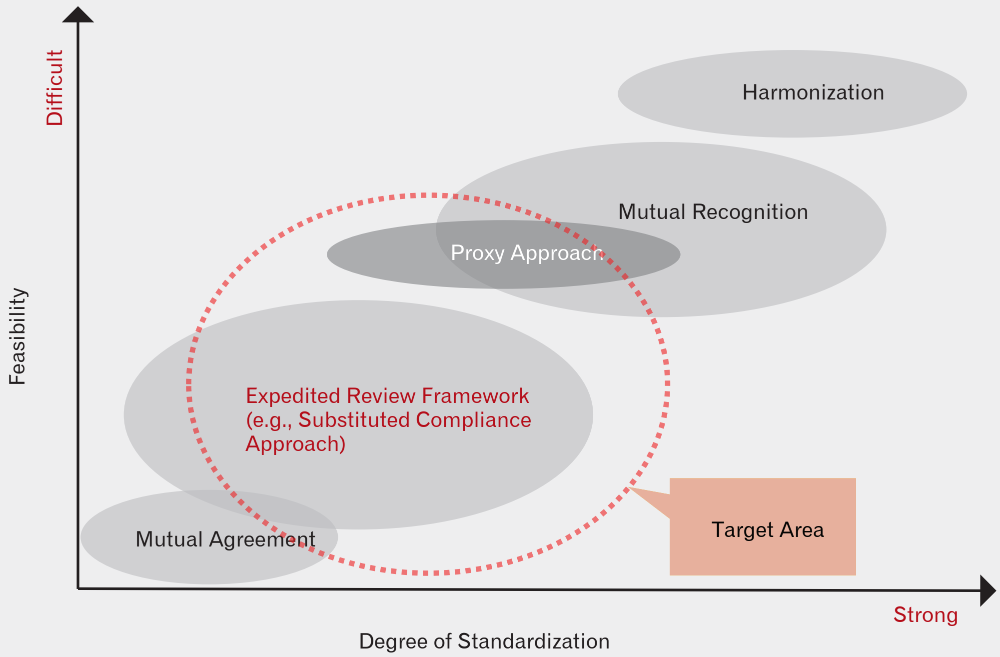
NAFMII = National Association of Financial Market Institutional Investors; HKEx = Hong Kong Exchange; MTN = Medium Term Note; IFSA = Indonesian Financial Services Authority; J-FSA = Japanese Financial Services Agency; QIB = Qualified Institutional Buyer; KOFIA = Korea Financial Investment Association; BM = Bursa Malaysia; SC MY = Securities Commission Malaysia; SEC = Securities and Exchange Commission (Philippines); MAS = Monetary Authority of Singapore; SGX = Singapore Exchange; MOF = Ministry of Finance (Thailand); AI = Accredited Investors.

[a] MTN issues are reported by KSEI to IFSA as part of the periodic reporting to IFSA of assets held in KSEI. There is no reporting made by the MTN issuer to IFSA prior to or after the issuance of MTN.

[b] THB bond only. In case of non-THB securities, SEC will be the single regulator.

Source: ADB Consultants for SF1.

Figure 5: Considered AMBIF Regulatory Processes Considered for AMBIF



Source: ADB Consultants for SF1.

a notification or simple filing of bond issuance information to the regulators or designated authorities, to those processes that are geared toward approval of bond issuance activities and are needed to fulfill the legislative mandate of the respective regulatory authority. Hence, SF1 realized that no single practiced regulatory process or approach in the context of bond issuance appears easily transferable to all other markets in the region. As a result, SF1 had to identify the use of other approaches that could yield a common protocol among participating markets.

Hence, SF1 turned to other accepted mechanisms of agreements between policy bodies and regulatory authorities, and which could be considered in the context of the implementation of AMBIF. **Figure 5** illustrates the possible options for regulatory processes tabled for consideration in Phase 2.

SF1 Initial Approaches: Mutual Recognition and Mutual Agreement

Chief among the possible approaches for an agreement between policy bodies and regulatory authorities are Mutual Recognition and Mutual Agreement. An assessment of their suitability and possible use in the context of AMBIF is presented below.

Mutual Recognition

Mutual Recognition, in effect, represents a broader concept that includes different instances for parties to mutually recognize another party's (potentially different) regulations or practices as acceptable in one's own jurisdiction. Mutual Recognition as employed between jurisdictions or governments can be fairly formal and elaborate in terms of legal significance and policy implementation up to, for example, the need to enter into a treaty. At the same time, between regulators, Mutual Recognition is typically used for practices within the respective remit of the individual authorities. The actual implementation of Mutual Recognition in each instance may differ.

Although useful as an approach to realizing the concept of AMBIF, participating economies may not yet be comfortable with recognizing other economies' regulations as part of their own. In addition, Mutual Recognition has not been sufficiently tested in ASEAN+3 economies with respect to professional capital market regulatory processes. As a result, the use of Mutual Recognition does not appear to be suitable since SF1 would not want an unproven regulatory process to delay the implementation of AMBIF unnecessarily.

Mutual Agreement

In contrast, Mutual Agreement is achieved via the consent of a number of parties to a specific arrangement. However, ABMF discussions and expert contributions identified Mutual Agreement as potentially too limited for the purpose of the implementation of AMBIF. Mutual Agreement is not legally binding, and while it does not require regulatory changes, it may not be sufficient for AMBIF-related agreements between regulators. In addition, since the implementation of AMBIF requires the commitment of issuers, investors, intermediaries, and regulators to domestic bond markets, Mutual Agreement may not send a suitably strong signal to stakeholders. At the same time, Mutual Agreement could be considered by market participants during the actual implementation of AMBIF in a given market.

Proxy Approach

Since AMBIF is aiming to introduce a regionally standardized bond issuance framework, it requires a clearly defined and agreed-upon bond issuance regulatory process that factors in expected cooperation among the participating regulatory bodies.[17] In the search for a more suitable approach in relation to AMBIF, SF1 members discussed in greater detail other approaches such as the Proxy Approach and the Substituted Compliance Approach. These approaches are explained below in the context of AMBIF.

Proxy Approach. The term Proxy Approach was defined by the ADB Secretariat to propose a solution in which any regulatory authority would accept a regulatory process approved by another regulator as valid for issuing bonds in its own jurisdiction without requiring an additional regulatory process of its own. In effect, the Proxy Approach is a variant of Mutual Recognition, but it would follow a narrower interpretation for the purpose of its use under AMBIF. For instance, a regulatory process that satisfies the regulatory body in the issuer's location (Home Regulator)[18] would be unreservedly accepted by the regulatory body in the issuance location (Host Regulator)[19] as valid for issuing bonds in the host economy, and vice versa. Any regulator could, hence, become a proxy for the fulfillment of the regulatory process in all other jurisdictions. One of the most significant arguments in favor of a Proxy Approach would be for issuers to be eligible for direct issuance in all other markets upon the first (proxy) approval.

However, discussions with regulatory authorities highlighted the discomfort of some institutions with the Proxy Approach premise in which all jurisdictions' regulatory processes would be satisfied with any regulatory process from any other participating economy. Although SF1 members acknowledged the intention of streamlining the regulatory process, the Proxy Approach was deemed not suitable for immediate consideration in the context of AMBIF, given the differing stages of bond market development among ASEAN+3 countries and the need for some jurisdictions to comply with existing regulatory processes as stipulated in law or regulations. However, the Proxy Approach remains a possible objective for the regulatory process within AMBIF, once participating economies have gained some experience with regional cooperation. Thus, the Proxy Approach is described in more detail in Appendix 1 for future consideration.

17 Regulatory bodies, or regulators, refers to the regulatory authorities, listing or registration places, or other institutions that are directly involved in the bond issuance regulatory process specific to individual markets.

18 Home Regulator is the regulatory body at the domicile of the issuer.

19 Host Regulator refers to the regulatory body for bond issuance if the country is not the domicile of the issuer.

Expedited Review Framework (Substituted Compliance Approach)

Expedited Review Framework. In the process of evaluating the different approaches, SF1 began to emphasize those approaches that would support the specific needs of AMBIF. Regulatory authorities should be able to comply with the prescribed regulatory processes in their jurisdictions while enabling the proposed AMBIF regulatory process to generate tangible benefits for all AMBIF participants; the focus here was on a faster, more efficient process to reduce the regulatory burden and achieve better time to market. In ASEAN+3, the term Expedited Review Framework is the preferred wording for such an approach.

Substituted Compliance Approach. One example for an Expedited Review Framework is the Substituted Compliance Approach (SCA). SCA is a regulatory process first defined by Asian regulatory authorities in 2012 (see Appendix 2 for more detail). SCA suggests a process where one regulator incorporates the regulatory process of another regulator into its own decision-making process, in effect substituting the deciding regulator's process in part or as a whole, depending on the comfort level and practices of each participating regulatory authority. Since substituting the regulatory process as a whole would be the equivalent of the Proxy Approach, and ultimately Mutual Recognition, the use of SCA in the context of AMBIF was seen as offering a mechanism for the relevant authorities to cooperate to achieve an expedited regulatory process.

Applying SCA in the context of AMBIF, both the Home Regulator and the Host Regulator are assumed to cooperate in processing a bond issuance, by incorporating a (preliminary) review process of one regulator into the regulatory process of another regulator, with a view to complete the overall regulatory process in an expedited manner. This approach can ensure that each regulatory authority would be able to maintain its own statutory regulatory processes as necessary and achieve the intended benefits.

SCA would be particularly important at the initial stage of implementing AMBIF, while achieving the Proxy Approach could still represent the long-term vision for an approach to regulatory processes among ASEAN+3 economies. At the same time, SCA is still being discussed among the original regulatory participants and, as such, does not come with prescribed methods for actual cooperation among regulators. Such methods would still have to be defined by ABMF.

Mutual Cooperation among Regulators under SCA. Assuming SCA as the basic approach for a regulatory process required for implementing AMBIF, SF1 members further studied specific ways of how to effect such mutual cooperation among regulators for AMBIF bond issuance. Through discussion among members and consultation with regulatory authorities, the three options detailed in the next section were proposed for the implementation of the AMBIF regulatory process. However, nothing should prevent the use of pilot issues, or other implementation approaches, while these options are being further discussed and refined.

Application of AMBIF Regulatory Process

Option 1: Notice of AMBIF Bond Issuance by Regulators

In essence, an SCA for AMBIF would require both the Home Regulator and the Host Regulator to cooperate to achieve an expedited regulatory process for bond issuances across markets. For this purpose, it is proposed that the regulators issue a notice of an AMBIF bond issuance in their jurisdiction to the regulators in all other participating economies. By doing so, the information on such AMBIF bond issuance could be shared among the regulators and utilized for the purpose of an expedited regulatory process. This is perceived to be an appropriate and basic method for the implementation of AMBIF. It is also understood that some regulators could question the increasing regulatory burden and possibly dispute their legal responsibility under such notice. At the same time, SF1 discussions have identified the challenges for some regulators to issue notices in a language other than their own, both from a legal and practical perspective.

Option 2: Experienced Authority as Preliminary Reviewer

A number of markets within ASEAN+3 already have significant experience with the regulatory process for bond issues from both their domestic institutions and issuers from other jurisdictions. These markets also have well-established investor universes that can be efficiently utilized in seeking liquidity for the bonds issued under AMBIF. Given this, utilizing experienced authorities and regulators in established markets as preliminary reviewers of AMBIF bond issuances instead of the Home Regulator or the Host Regulator should be considered, while the final regulatory process would remain with the regulators of the respective issuance location**.** On the other hand, SF1 members saw this as a potentially additional step; if the Host Regulator was expected to have ultimate responsibility, the involvement of a third party may not cut down on the necessary regulatory activities.

Option 3: Posting Information on AMBIF Bond Issuance

Rather than requiring regulators to make a notice on AMBIF bond issuance to other regulators, SCA could also be implemented by requiring any regulator to post or publish their assessment and results of their AMBIF bond issuance regulatory process on their website. The objective of such postings is to share information on the bond issuance with other regulators and market participants, but it is not intended to satisfy legal or liability requirements. For additional bond issuance in another economy, the issuer or its agent would be required to submit the requisite AMBIF bond issuance information to the Host Regulator so that the Host Regulator could cross-check the submitted information with the information already posted by other regulators.

In the course of Phase 2 discussions, a variant of Option 3 was also considered and ABMF members decided to include in their considerations the possibility of establishing a common communications platform for bond issuance information from AMBIF Issuers. In addition, information on AMBIF could also be stored and collectively posted by participating regulators and, potentially, even other market participants. This information could then be shared among all stakeholders. This option has been labeled the AMBIF Information Platform.

AMBIF Information Platform

In the process of discussing the AMBIF Information Platform as a possible communications solution for regulatory authorities and (potentially) other AMBIF market participants, two particular applications of this concept emerged: the Individual AMBIF Information Platform (AMBIF IIP) and the Common AMBIF Information Platform (AMBIF CIP). The AMBIF IIP and the AMBIF CIP solutions are reviewed below in greater detail.

Individual AMBIF Information Platform (AMBIF IIP)

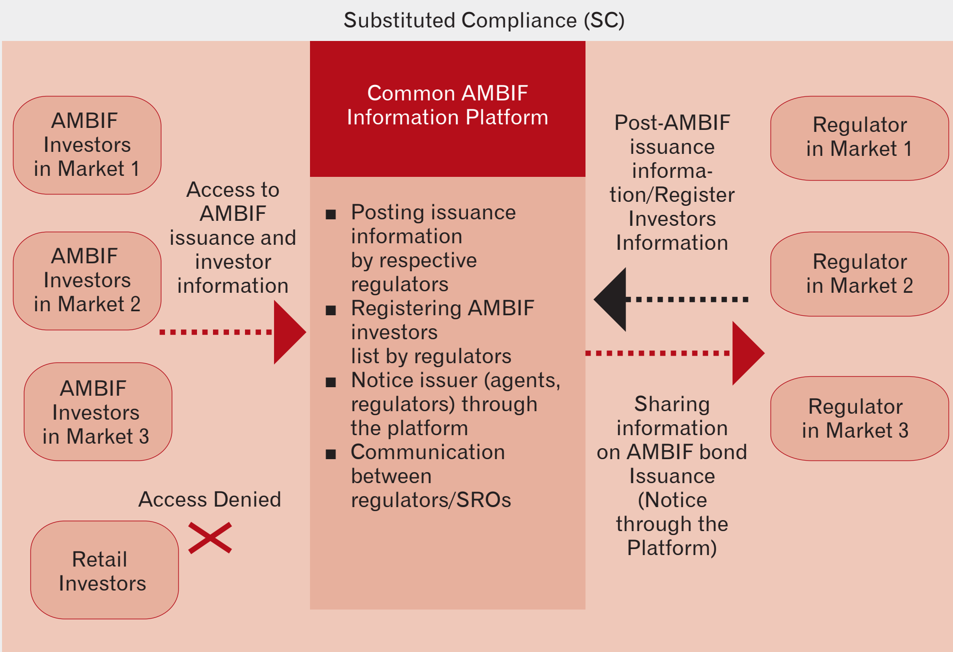
An AMBIF IIP solution envisages the posting of relevant AMBIF bond issuances and related information on any given regulatory authority's own website which, in effect, would become the AMBIF IIP. At this point in time, a number of countries already have such AMBIF IIPs, either in the form of regulator websites housing a market information platform or websites operated by SROs or market associations. Where common market trading platforms exist, these platforms either presently or in the future could fulfill the function of an AMBIF IIP. In addition, pricing agencies and credit rating agencies may have some of the desired information detailed on their respective websites.

Nevertheless, it is understood that these existing potential AMBIF IIPs may differ significantly in their purpose, role, and functions, not just in the amount and detail of (bond issuance) data they carry. Similarly, it is entirely possible that these AMBIF IIPs would not be able to be re-tasked for the purposes of AMBIF, or may need to be updated or significantly upgraded in order to support the implementation of AMBIF.

Common AMBIF Information Platform (AMBIF CIP)

In contrast, an AMBIF CIP solution would have to be created, as no common communications or information sharing tool presently exists. The only overarching electronic platforms in the context of the region's bond markets are bond trading systems that are purely commercially focused and cannot be re-tasked for the purposes of AMBIF.

Figure 6: Common AMBIF Information Platform



Source: ABMF-K members.

An AMBIF CIP could, however, be an efficient alternative to both the regulatory notice concept and the use of a number of AMBIF IIPs as a regional common platform to support the implementation of AMBIF for all participating ASEAN+3 countries, and even the dissemination of AMBIF-related information. The AMBIF CIP concept has comparative advantages in terms of information management and sharing, implementing SCA, and facilitating communications between and among regulators and AMBIF market participants. All efforts would be regional in nature and available in all markets.

AMBIF CIP is envisaged as an interoperable platform that enables the linking of each idividual professional market in ASEAN+3 for the efficient implementation of AMBIF. Such a platform would allow participating regulators to post relevant AMBIF bond issuance information and even register a list of AMBIF Investors and other market details as shown in **Figure 6**. By extending access to AMBIF Investors and AMBIF Issuers, this investor and issuance information could be collected and shared more efficiently. At the same time, by not providing access to retail investors, the platform could also contribute to ring-fencing those investor types from transactions in AMBIF Markets. The platform could also be utilized for communications between investors, regulators, and SROs to discuss and overcome the existing regulatory barriers and standardize market practices. Further discussions on this proposal are required.

Features of an AMBIF CIP could include common infrastructure for all information across AMBIF Markets that could be utilized as an information sharing system for AMBIF bonds and made available to all interested parties. An AMBIF CIP could collect and widely distribute AMBIF bond-related information. In effect, an AMBIF CIP could be the support system for SCA. AMBIF CIP could facilitate communications, regulatory processes, and mutual understanding among ASEAN+3 regulators. As a management system for AMBIF Markets, it could act as the information repository and manage all relevant data, including details such as the eligibility requirements for market participants. **Figure 6** gives a first impression of how an AMBIF CIP might function.

Next Steps

Due to the necessary focus on the definition of AMBIF and its components and processes, SF1 will conduct further discussions on informational platform concepts in the proposed Phase 3. Already being considered are the establishment of a voluntary working group to flesh out the details of possible AMBIF IP solutions and the study of the process flow of bond issuances where the capture in an AMBIF IIP is already evident, such as in markets like Indonesia, Japan, the Republic of Korea, Malaysia, and Thailand. A next step could then be to consider regularizing the process flow and the issuance document submission criteria to an AMBIF CIP in support of the implementation of AMBIF.

Approach for the Definition of a Professional Market

Most ASEAN+3 economies with established bond markets already feature a professional market or market segment that could be considered for participation in AMBIF. At the same time, SF1's mandate extends to the development of the domestic bond markets of all 14 jurisdictions in ASEAN+3. Hence, solutions proposed by SF1 should include mechanisms accessible for all participating economies.

In principle, participation in AMBIF requires the existence of a professional market or market segment in each participating jurisdiction since SF1 members concluded this would be the best possible manner in which to connect domestic bond markets across the region. At the same time, some jurisdictions have not yet officially defined such professional markets or market segments, although these economies show evidence of a professional market through market practice and the participation of investors, issuers, and intermediaries defined as professional in Chapter IV.

In support of the objective to find solutions for all participating economies, SF1 has developed a possible approach for the definition of a professional market in those economies where such a market or market segment is presently not officially defined. In fact, this approach is based on the same definitions of and justifications for individual AMBIF components.

The idea behind this approach is that while in some economies professional markets may not be officially defined in laws and regulations, many if not all of the necessary ingredients of professional would markets, in fact, already be evident in these economies. The significant investors would be licensed entities—such as banks, broker–dealers, or insurance companies—and fulfill the qualification detailed under AMBIF Investors. Issuers already active in these economies would be domestic or regionally well-known companies or institutions that satisfy the details of the proposed AMBIF Issuers. Instruments issued in the existing marketplace would include straight bonds and (potentially) *Sukuk* in those economies with an established Islamic finance market, as have been identified through the discussion on AMBIF Instruments. In addition, by default, domestic issuances would be denominated in LCY, thereby fulfilling one basic requirement for AMBIF. Economies may even already permit the issuance of FCY instruments, which is an additional option under AMBIF. At the same time, professional market participants would have shaped issuance documentation and disclosure items as part of their continuous market interaction.

Key among the basic approaches observed by SF1 is the concept of not requiring (major) changes to existing legislation and/or regulations as a result of the implementation of AMBIF. The earlier reference in this report to no (major) changes is based on the realization that policy bodies and regulatory authorities may see the benefit of making some adjustments to their respective legal frameworks and/or regulatory environments as part of their ongoing governance and market development activities.

At the same time, policy bodies and regulatory authorities are already in a position to implement specific market initiatives, through the use of prescriptive guidelines, directives or notices, depending on the terminology and practices for each jurisdiction. It is proposed that ASEAN+3 economies in which no specific regulations exist consider using this established mechanism for the introduction or definition of a professional market or market segment.

In this specific case, the ADB Secretariat envisages the potential definition of a domestic professional marketplace by making reference to the existing professional qualifications of its participants, desired instruments, and currencies and documentation as already established through market practice. Where suitable and applicable, similar existing licensing and governance principles could be extended to intermediaries, such as accounting and law firms. Hence, this concept has the potential to bring together all of the proposed AMBIF components in a single guideline to be issued by the relevant policy body or regulatory authority to create a market or market segment that would be immediately compatible with AMBIF, thereby permitting the participation of any ASEAN+3 economy in AMBIF.