Part 1

Comparative Analysis and Implication for the Next Phase of ABMF Sub-Forum 1 (2012–2013)

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Economies Covered in the Comparative Analysis

This report mainly discusses the harmonization and standardization of bond markets of 10 economies with existing bond markets in the Association of Southeast Asian Nations, People's Republic of China, Japan and Republic of Korea (ASEAN+3).

Table 1.1 Economies Covered in the Comparative Analysis

	Economy	Economies Subject to Comparative Analysis (Ten Scripless Securities Markets)	Economies Covered Under Bond Market Guides
1	China, People's Rep. of	✓	✓
2	Hong Kong, China	✓	✓
3	Indonesia	✓	✓
4	Japan	✓	✓
5	Korea, Rep. of	✓	✓
6	Malaysia	✓	✓
7	Philippines	✓	✓
8	Singapore	✓	✓
9	Thailand	✓	✓
10	Viet Nam	✓	✓
11	Lao PDR	–	✓ (voluntary submission for reference)[a]

[a] At the outset, it is understood that the bond markets of Brunei Darussalam, Cambodia, Lao People's Democratic Republic (PDR), and Myanmar are in the planning stage for creation or in the early stages of development; therefore, as discussed in the ASEAN+3 Bond Market Forum (ABMF) in the past, the ADB secretariat did not ask these developing markets to provide market information. Instead, ABMF members and experts focused on sharing the information collected from these developing markets to support their initiatives to establish or develop their respective bond markets. This is the reason the ABMF secretariat held workshops in Brunei Darussalam and Lao PDR in May and June 2011. However, this did not entirely prevent the two economies from providing any market information to be included in the market guides. Lao PDR proactively and voluntarily submitted their bond market guide as reference.

Source: ADB Consultants, based on research materials and market visit information.

Summary of Findings

A. Overall Assessment – Sound and Robust Market Infrastructure

All of the 10 securities markets covered under this research project have built robust market infrastructures, including legal and operational systems to secure transactions in the domestic bond market over the past 10 years.

In almost all markets, key legal and regulatory frameworks and related systems are in place. The following tables detail some of the features of these key bond-market infrastructures.

For instance, a clear definition of securities (bonds) is considered to be a fundamental base and condition for the sound development of the bond market. Most of the jurisdictions have a specific definition of securities, or are striving to further improve or clarify the definition of securities.

Table 1.2 Existence of a Clear Definition of Securities (Bonds)

Jurisdiction	Existence of a Clear Definition of Securities (Bonds)
People's Republic of China	Securities concepts may differ by industry or by competent authority in China. The *Corporation Law and Enterprise Law* co-exist and, hence, either may set rules for issuance of securities, depending on the industry, issuer, and type of security. The official definition of securities is provided in the *Securities Law* of PRC, which was revised in 2005. The present law shall be applied to the issuance of and transactions in stocks, corporate bonds, as well as any other securities lawfully recognized by the State Council within the territory of the PRC. However, some bonds do not fall under the *Securities Law*. In case where there is no such provision in the present law, the provisions of the *Corporation Law* and other relevant laws and administrative regulations shall be applied.
Hong Kong, China	For bonds to be listed on the Hong Kong Stock Exchange or cleared through the Central Moneymarkets Unit (CMU), they must satisfy the criteria as set out in, among others, the Listing Rules and CMU Service Reference Manual (which is accessible to CMU members only), respectively. Also, a definition of securities is laid down in the *Securities and Futures Ordinance* (SFO) of the Securities and Futures Commission (SFC).
Indonesia	The definition of securities is not confined to a single law. Original relevant definitions found in the commercial code left by the Dutch, and remaining in force are the following: Promissory note (PN), cheque, and bill of exchange. There is no mention of corporate bonds and debt instruments in the *Company Law*; however, they are often described or covered in the Articles of Association of companies.

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Table 1.2 continuation

Jurisdiction	Existence of a Clear Definition of Securities (Bonds)
	The clearest definition of securities can be found in the *Capital Market Law No. 8* (1995). Pursuant to the *Capital Market Law*, securities are classified as PNs, commercial paper (CP), shares, bonds, evidences of indebtedness, participation units of collective investment contracts, futures contracts related to securities, and all derivatives of securities. Today, the distinction of debt instruments can be divided into the capital market and the money market: (1) the capital market covers bonds, (2) the money market covers PN, medium-term notes (MTN), CP, Certificate of Central Bank (SBI, Sertifikat Bank Indonesia); most instruments have been introduced by foreign bank participants in recent years. MTN and CP are synonymous for all intents and purposes; legal treatises exist but there are no statutory definitions of these instruments.
Japan	The *Companies Act* defines corporate bonds. A uniform legal framework for all types of securities exists. Distinctions between dematerialization or immobilization and physical securities are clear. Legal ownership structure of dematerialized or immobilized securities is clearly stipulated.
Republic of Korea	The revised *Commercial Act* (to take effect in 2012) provides a basis for corporate bonds diversity. This should resolve the discrepancy in the definition of securities between the *Commercial Act* and the *Financial Investment Services and Capital Markets Act* (FSCMA).
Malaysia	Under section 2(1) of the *Capital Markets and Services Act 2007*, securities are defined as: (a) debentures, stocks or bonds issued or proposed to be issued by any government; (b) shares in or debentures of, a body corporate or an unincorporated body; or (c) unit trusts or prescribed investments, and includes any right, option or interest in respect thereof, but does not include futures contracts. Debentures are also stipulated in article 125 of the *Companies Act 1965*.
Philippines	Under section 3 of the *Securities Regulation Code* (SRC), securities are shares; participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate; contract; or instrument, whether written or electronic in character. The Philippine Dealing and Exchange (PDEx) Rules for the Fixed Income Securities Market, as amended (PDEX Rules), define securities as fixed-income securities, including government securities.
Singapore	Securities are defined in the *Securities and Futures Act* (SFA) in sections 2(1), 196A, 214, and 239.
Thailand	Section 4 of the *Securities and Exchange Act B.E. 2535* stipulates the definition of securities.
Viet Nam	Pursuant to article 3 of the amended and supplemented *Securities Law No. 62/2010/QH12* and article 6 of *Securities Law No. 70/2006/QHII*, securities mean evidence from an issuing organization certifying the lawful rights and interest of an owner with respect to assets or capital portion. Securities may take the form of certificates, book entries or electronic data, and shall comprise the following types: 1) shares, bonds and investment fund certificates; 2) share purchase rights (rights issue), warrants, call options, put options, future contracts, groups of securities and securities indices; 3) investment capital contribution contracts; and 4) other types of securities stipulated by the Ministry of Finance.

Source: ADB Consultants, based on research materials and market visit information.

Trades can be executed efficiently in a secure manner; operations and practices in the markets are comparable to other developed bond markets. All of the 10 securities markets now have a scripless securities system. Notwithstanding, some still have room for further improvement in maximizing the benefits available from such systems.

Table 1.3 Existence of Scripless Securities System

Jurisdiction	Existence of Scripless Securities System
People's Republic of China	Yes
Hong Kong, China	Yes
Indonesia	Yes
Japan	Yes
Republic of Korea	Yes
Malaysia	Yes

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Table 1.3 continuation

Jurisdiction	Existence of Scripless Securities System
Philippines	Yes
Singapore	Yes
Thailand	Yes
Viet Nam	Yes

Source: ADB Consultants, based on research materials and market visit information.

The introduction of scripless securities led to the issuance, keeping and transfer of bonds on a book-entry basis in these markets. This reduces operational risk significantly. In this context, it is noteworthy that the People's Republic of China (China) and Japan have implemented a 'registered notes only' policy. In addition, from the viewpoint of exchangeability of scripless bonds to physical bonds, it is observed that scripless bonds can no longer be exchanged to physical bonds in China and Japan. It seems that these two countries are pursuing the same policy direction.

Table 1.4 Forms and Status of Bonds across Economies

Jurisdiction	Form of the Bonds (Settlement Method)	Status (Bearer/Registered)
People's Republic of China	• Book-entry	Registered. (Bonds are generally getting scripless in a central register and registered in an account holder's or bondholder's name; some older bearer bonds may still exist. As for China Central Depository and Clearing (CCDC)-settled bonds in the China Inter-bank Bond Market, CDCC centralized the management of the bearer bond library in 1998, and 2001 saw the end of bearer bonds in this market.)
Hong Kong, China	• Book-entry form (dematerialized) for Exchange Fund paper, and • Global note form for corporate bonds	Bearer/Registered
Indonesia	• Book entry (from 2000) • Physical certificate still exist (issued prior to 2000)	Bearer/Registered
Japan	• Book-entry (Completely dematerialized, except for a few non-central securities depository [CSD] settled private placed notes)	Registered
Republic of Korea	• Book-entry **Dematerialized securities:** Securities which are not issued in paper form and where ownership is held and is transferable by book entry in a ledger maintained by a CSD or account management institution. **Immobilized securities:** Physical securities and non-certificated securities held and transferred by book entry in a ledger maintained by a CSD or account management institution.	Bearer/Registered
Malaysia	• Listed bonds: Book entry at Bursa Malaysia Depository • Unlisted debt securities: Book entry at Bank Negara Malaysia (BNM)	Basically, registered. Cagamas papers are unsecured bearer bonds issued by Cagamas, the national mortgage corporation established in 1986 to promote the secondary mortgage market in Malaysia.
Philippines	• Government Securities: Book entry in the Registry of Scripless Securities (RoSS) or in the Philippine Depository and Trust Corporation (PDTC) • Scripless Corporate Bonds: Book entry in PDTC • Physical Corporate Bonds: Endorsement and actual delivery of physical certificates with duly notarized Deed of Assignment	Bearer/Registered. Dematerialization/immobilization versus physical securities: both equities and debt securities are legally recognized in physical and dematerialized forms. In the organized market for debt securities, however, debt securities must be in dematerialized form and cannot be listed if the same are still in physical form, even if immobilized.

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Table 1.4 continuation

Jurisdiction	Form of the Bonds (Settlement Method)	Status (Bearer/Registered)
Singapore	• Book entry for government bonds • The Central Depository Pte. (CDP) holds universal certificates for physical bonds	Bearer/Registered. A foreign issuer is normally required to appoint a paying agent in Singapore while debt securities are quoted on the Exchange and upon the issue of debt securities in definitive form. The Exchange may accept other arrangements to enable definitive certificate holders of the bearer debt securities in Singapore to be paid promptly.
Thailand	• Book entry • Promissory notes (PNs) and commercial papers are physical, bearer instruments In accordance with sections 225 to 228 of the *Securities and Exchange Act* (SEA), immobilization in the Thailand Securities Depository (TSD) system has been arranged through the transfer of securities by book entry. The transfer of securities by book entry shall be deemed to be the delivery of securities, which constitutes the legal basis for the validity of securities transfer under section 199 and section 51 of the SEA. Moreover, securities transferred into the name of the TSD shall be presumed to be securities held by the TSD on behalf of its members or for any customers of its members. However, there is no explicit legislation for the dematerialization of securities.	Bearer/Registered. PNs are physical, bearer instruments issued by banks and other financial institutions.
Viet Nam	• Book entry • Municipal bonds are physical, bearer instruments. • Corporate bonds and state-owned enterprises (SOE) bonds can be held in bearer or registered form. • Listed corporate bonds have to be deposited at the Vietnam Securities Depository to be eligible for trading on the Exchanges.	Bearer/Registered

Source: ADB Consultants, based on research materials and market visit information.

Table 1.5 Exchangeability of Scripless Bonds to Physical Bonds

Jurisdiction	Exchangeability of Scripless Bonds to Physical Bonds
People's Republic of China	No
Hong Kong, China	Yes
Indonesia	Yes
Japan	No
Republic of Korea	Yes
Malaysia	Yes
Philippines	Yes
Singapore	Yes
Thailand	Yes
Viet Nam	Yes

Source: ADB Consultants, based on research materials and market visit information.

A bondholder meeting concept is one of the typical indicators of the maturity of a bond market. Ten out of Eleven jurisdictions already feature the bondholder-meeting concept as a basic infrastructure of their respective bond markets.

Table 1.6 Existence of a Concept of Bondholder Meeting

Jurisdiction	Existence of a Concept of Bondholder Meeting
People's Republic of China	Yes
Hong Kong, China	Yes
Indonesia	Yes
Japan	Yes
Republic of Korea	Yes
Malaysia	Yes
Philippines	Yes
Singapore	Yes
Thailand	Yes
Viet Nam	Meeting concept may be existent, but has not been established as a system.

Source: ADB Consultants, based on research materials and market visit information.

In addition, the existence of concepts of commissioned company, bond representative and trustee is important for investor protection in the bond markets. Most of the jurisdictions have such concepts in place, even though they may vary in name and individual features.

Table 1.7 Existence of Concepts of Commissioned Company, Bond Representative and Trustee

Jurisdiction	Existence of Commissioned Company/Bond Representative/Trustee Concept
People's Republic of China	Yes
Hong Kong, China	Yes
Indonesia	Yes
Japan	Yes
Republic of Korea	Yes
Malaysia	Yes
Philippines	Yes
Singapore	Yes
Thailand	Yes
Viet Nam	-

Source: ADB Consultants, based on research materials and market visit information.

At the same time, a credit rating system also plays an important role in the bond market. Particularly, it is considered that developing markets generally require a compulsory credit rating system for investor protection. Many of the developing markets in the region have such system.

Table 1.8 Obligation to Acquire Credit Rating upon Bond Issuance

Jurisdiction	Obligation to Acquire Credit Rating upon Bond Issuance
People's Republic of China	Yes.
Hong Kong, China	No.
Indonesia	Yes.
Japan	No. But, TOKYO PRO-BOND Market Listing requires a credit rating.
Republic of Korea	Yes.
Malaysia	Yes.

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Table 1.8 continuation

Jurisdiction	Obligation to Acquire Credit Rating upon Bond Issuance
Philippines	Yes.
Singapore	No. But, as a foreign debt-securities listing requirement of the Singapore Exchange (SGX), the issue of debt securities must have a credit rating of investment grade and above.
Thailand	Yes.
Viet Nam	No.

Source: ADB Consultants, based on research materials and market visit information.

Regulators in these markets are encouraged to further eliminate legal and regulatory uncertainties, and to maintain transparency of rules and practices in each domestic market.

Table 1.9 Main Market Authorities across covered Economies

Jurisdiction	Main Market Authority
People's Republic of China	• Inter-bank Bond Market (Over the Counter): People's Bank of China (PBOC) • Exchange Market (Shanghai Stock Exchange and Shenzhen Stock Exchange): China Securities Regulatory Commission (CSRC) • Foreign Currency Policy: PBOC, State Administration of Foreign Exchange
Hong Kong, China	Hong Kong Monetary Authority
Indonesia	Capital Market and Non-Bank Financial Service Supervisory Agency
Japan	Financial Services Agency
Republic of Korea	Financial Services Commission Financial Supervisory Service
Malaysia	Securities Commission Malaysia
Philippines	Securities and Exchange Commission
Singapore	Monetary Authority of Singapore
Thailand	Ministry of Finance Securities and Exchange Commission
Viet Nam	State Securities Commission (SSC) (Since March 2004, the SSC is under the jurisdiction of the Ministry of Finance of Viet Nam)

Source: ADB Consultants, based on research materials and market visit information.

Aiding the functioning of the bond markets, the role of self-regulatory organizations (SROs) in each domestic market is critically important. In the region, many of the jurisdictions have established SROs.

Table 1.10 Self-Regulatory Organizations across ASEAN+3 Bond Markets

Jurisdiction	Name of SRO	Membership	Sets Rules	Enforcement
People's Republic of China	NAFMII	Yes	Yes	Yes
Hong Kong, China	N/A	N/A	N/A	N/A
Indonesia	IDX KPEI KSEI	Yes Yes Yes	Yes Yes Yes	Yes Yes Yes
Japan	JSDA TSE TOKYO AIM	Yes Yes Yes	Yes Yes Yes	Yes Yes Yes
Republic of Korea	KOFIA KRX	Yes Yes	Yes Yes	Yes Yes

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Table 1.10 continuation

Jurisdiction	Name of SRO	Membership	Sets Rules	Enforcement
Malaysia	Bursa Malaysia ACI Malaysia (quasi)	Yes Yes	Yes Yes	Yes Yes
Philippines	PDS Group (PDEx)	Yes	Yes	Yes
Singapore	SGX	Yes	Yes	Yes
Thailand	ThaiBMA Exchanges	Yes Yes	Yes Yes	Yes Yes
Viet Nam	VBMA	Yes	Yes	–

ACI = Persatuan Pasaran Kewangan Malaysia; IDX = Indonesia Stock Exchange; JSDA = Japan Securities Dealers Association; KOFIA = Korea Financial Investment Association; KPEI = Indonesia Clearing and Guarantee Corporation; KRX = Korea Exchange; KSEI = Indonesian Central Securities Depository, Kustodian Sentral Efek Indonesia; NAFMII = National Association of Financial Market Institutional Investors; PDEx = Philippine Dealing and Exchange; SGX = Singapore Exchange; SRO = self-regulatory organization; ThaiBMA = Thailand Bond Market Association; TSE = Tokyo Stock Exchange; VBMA = Vietnam Bond Market Association
Source: ADB Consultants, based on research materials and market visit information

Bond markets in the region are distinct in many ways, such as in governing laws and responsible regulators based on their legal tradition and their own market needs, including documentation languages.

Table 1.11 Documentation Languages

Jurisdiction	Main Language	Alternative Language
People's Republic of China	Chinese	
Hong Kong, China	English	Chinese
Indonesia	Bahasa Indonesia	English
Japan	Japanese*	English for TOKYO-PRO BOND Market Listing
Republic of Korea	Korean (Hangul)	English for Qualified Institutional Buyer Market
Malaysia	English	
Philippines	English	
Singapore	English	
Thailand	Thai	English
Viet Nam	Vietnamese	

* Japan is in the course of introducing a partial English based documentation for disclosure from April 2012; Although the information for securities should be submitted in Japanese, most part of the disclosure information for issuer (including already disclosed reference information) can be submitted in English, except for a certain information. (Non-resident issuers' burden will be reduced)
Source: ADB Consultants, based on research materials and market visit information.

Foreign institutional investors are already able to access all ASEAN+3 active markets for bond investments in local currency, with the exception of the People's Republic of China. Having said so, the renminbi bond market in Hong Kong has been growing. Investors can access one or many ASEAN+3 markets, and buy corporate or government bonds, if they prefer, in local currency.

Table 1.12 Foreign Exchange and Currency-Related Restrictions

Jurisdiction	Foreign Exchange Rate Floating	Restrictions on Foreign Remittance (1. Own currency) (2. Investment principal) (3. Coupons or dividends)	Currencies eligible for CLS Settlement
People's Republic of China	Government-controlled floating, rate referring to currency basket	1. Restricted	–
		2. Restricted for a certain period of time after investment	
		3. Restricted for a certain period of time after investment	
Hong Kong, China	Link to US dollar (Currency Board System)	1. No restriction	Yes
		2. No restriction	
		3. No restriction	

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Table 1.12 continuation

Jurisdiction	Foreign Exchange Rate Floating	Restrictions on Foreign Remittance (1. Own currency) (2. Investment principal) (3. Coupons or dividends)	Currencies eligible for CLS Settlement
Indonesia	Floating	1. Restricted. (Rupiah foreign exchange trades must be done by Indonesian domestic banks; rupiah remittance between foreign banks is prohibited)	–
		2. No reporting required for repatriation of benefits.	
		3. Reporting required	
		(*) Real-demand principle applies to inbound foreign exchange or buying Indonesian rupiah only.	
Japan	Floating	1. No restriction	Yes
		2. No restriction. (ex post facto report required)	
		3. No restriction. (ex post facto report required)	
Republic of Korea	Floating	1. Restricted	Yes
		2. No restriction	
		3. No restriction	
Malaysia	Managed float against a basket of currencies, following the de-pegging of the ringgit	1. Restricted (All remittances out of the country must be made in foreign currency). Real-demand principle applies to inbound FX only.	–
		2. No restriction for non-resident investors to repatriate in foreign currency	
		3. No restriction for non-resident investors to repatriate in foreign currency	
Philippines	Floating	1. Restricted. Registration with the Bangko Sentral ng Pilipinas (BSP) for issuance of Bangko Sentral Registration Document (BSRD) on per transaction basis is required to qualify for automatic conversion of peso sale or interest into foreign exchange for outward repatriation.	–
		2. Registration with BSP for issuance of BSRD on per transaction basis is required to qualify for automatic conversion of peso sale or interest into foreign exchange for outward repatriation.	
		3. Interest automatically qualifies for outward repatriation if principal investment has BSRD.	
Singapore	Floating against basket of currencies	1. No restrictions (investor can hold Singapore dollar in Tokyo, for example)	Yes
		2. No restriction	
		3. No restriction	
Thailand	Managed Floating	1. Restricted	–
		2. Reporting is required.	
		3. Reporting is required.	
Viet Nam	Controlled Floating	1. Restricted	–
		2. Restricted for certain period of time after investment	
		3. No restriction	
		(Viet Nam issue is based on availability of foreign currency)	

Source: ADB Consultants, based on research materials and market visit information.

To illustrate such distinction, the transfer of ownership of bonds may not be the same as in the rules governing the finality of settlement; almost all of the markets have established their specific market practices. For details, please refer to "SF1: Contents of Findings, XII. Transfer of Securities (or Property rights) and Finality of Settlement of Scripless Bonds."

Although actual condition regarding default recognition may be different by the terms and conditions of the bonds and by jurisdiction, default procedures are usually well disclosed in the bonds issuance documentation in many jurisdictions in the region. In many jurisdictions and bonds issuance documentation, these default procedures do not usually deviate from the documentation standards of international bond issues. In some cases, however, there are still uncertainties regarding default recognition and procedures. On the other hand, the status of development of bankruptcy-related legislation in the region differs between jurisdictions.

Generally, the companies act and/or bankruptcy law and/or related laws, where applicable, will be quoted in the trust deed or similar documents to guide investors in making informed decisions. But in some jurisdictions in the region, bankruptcy-related law and procedures are still in the development stage. A greater understanding and further analysis of bankruptcy-related law and procedures across regional markets is important for future consideration.

For details, please refer to "SF1: Contents of Findings, VI. Event of Default/Payment Default" and "SF1: Contents of Findings, IX. Bankruptcy Procedures"

B. Sub-Forum 1: Summary of Findings

1. Over-the-Counter Market and Exchange Market

Bonds can be listed on the stock exchanges in many markets, but most of the instruments are traded on the over-the-counter (OTC) market. The OTC market remains the main trading place for bond markets, but selected exchanges in Republic of Korea and China have begun to establish significant market segments. For instance, transactions in China's Inter-bank Bond Market involve the trade system of the China Foreign Exchange Trade System (CFETS) and money-brokers, while exchange-market trading is done through the Shanghai Stock Exchange (SSE) and Shenzhen Stock Exchange (SZSE). In addition, since July 2011, Singapore government securities (SGS) can be traded on the Singapore Exchange (SGX), with particular focus for retail investors. On the other hand, Republic of Korea will launch the Qualified Institutional Buyer (QIB) market in May 2012 for professional investors, using the OTC trading platform of the Republic of Korea Financial Investment Association (KOFIA); the market will provide for exemption from the full-disclosure regime in Republic of Korea.

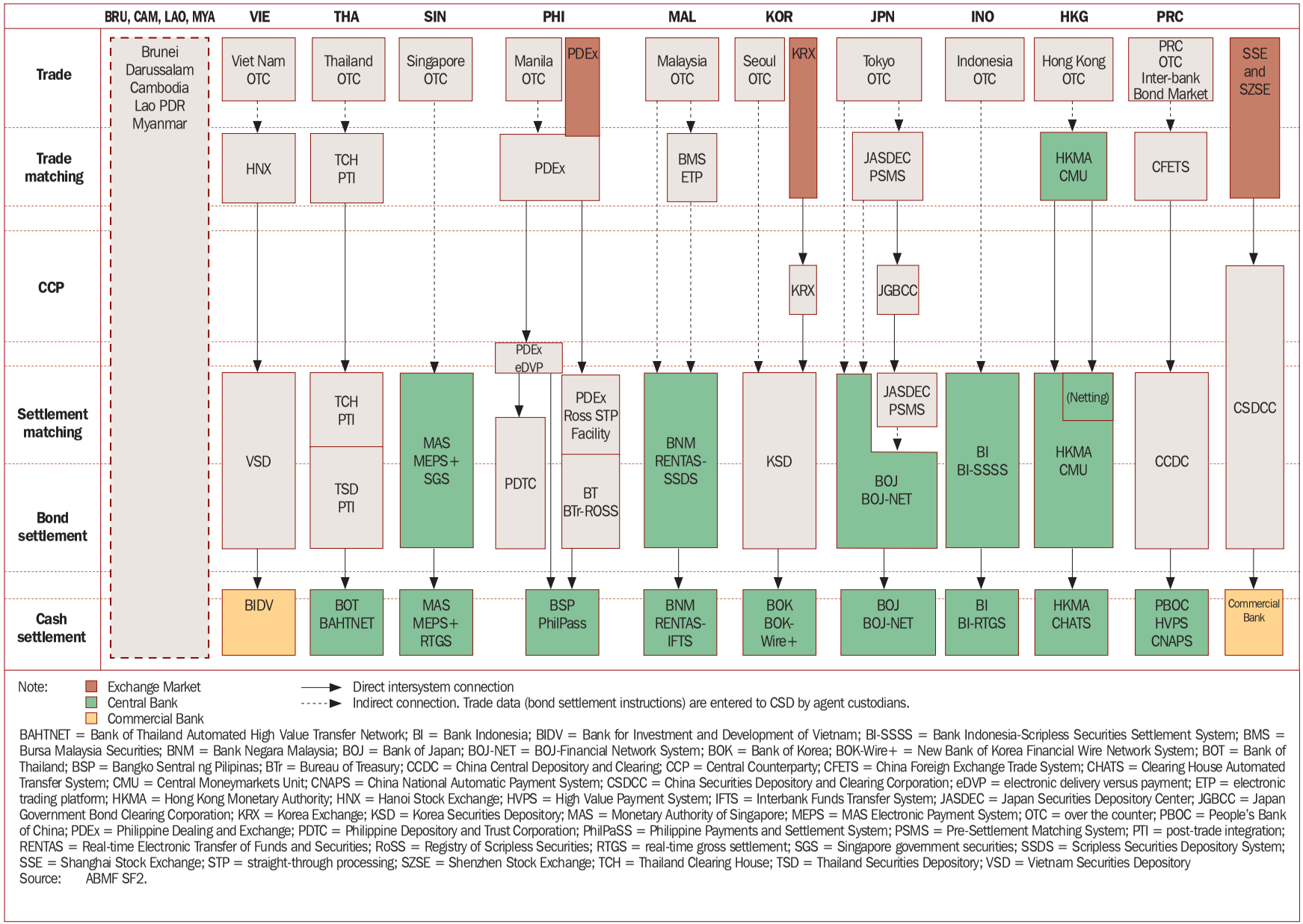
Table 2.1 Over-the-Counter Market versus Exchange Market

Jurisdiction	OTC Market as a Main Trading Place	Exchange-Market Trading
China	Yes. Inter-bank Bond Market, not directly available to foreign investors. Domestic institutions are permitted to trade in OTC market.	Yes (SSE and SZSE).
Hong Kong, China	Yes	Yes (HKEx). But only accounts for a relatively small portion of all the trading in bonds.
Indonesia	Yes	Possible but not observed.
Japan	Yes	No.
Republic of Korea	Yes	Yes (KRX). Government Bonds.
Malaysia	Yes (Only for unlisted debt securities)	No.
Philippines	Yes (Regulated OTC)	No.
Singapore	Yes	Yes. (Government bonds, mainly for retail investors, since July 2011)
Thailand	Yes. BEX provides electronic platform for OTC fixed-income trading named Fixed Income and Related Securities Trading System (FIRST)	No.
Viet Nam	Yes. But not yet regulated.	No.

BEX = Bond Electronic Exchange; SZSE = Shenzhen Stock Exchange; HKEx = Hong Kong Exchanges and Clearing; KRX = Korea Exchange; OTC = over the counter; SSE = Shanghai Stock Exchange
Source: ADB Consultants, based on research materials and market visit information.

The following diagram provides further illustration on the trading to settlement infrastructure across the observed economies.

Figure 2.1 ASEAN+3 Government Bond Market Infrastructure Diagram



Note: Exchange Market; Central Bank; Commercial Bank; Direct intersystem connection; Indirect connection. Trade data (bond settlement instructions) are entered to CSD by agent custodians.

BAHTNET = Bank of Thailand Automated High Value Transfer Network; BI = Bank Indonesia; BIDV = Bank for Investment and Development of Vietnam; BI-SSSS = Bank Indonesia-Scripless Securities Settlement System; BMS = Bursa Malaysia Securities; BNM = Bank Negara Malaysia; BOJ = Bank of Japan; BOJ-NET = BOJ-Financial Network System; BOK = Bank of Korea; BOK-Wire+ = New Bank of Korea Financial Wire Network System; BOT = Bank of Thailand; BSP = Bangko Sentral ng Pilipinas; BTr = Bureau of Treasury; CCDC = China Central Depository and Clearing; CCP = Central Counterparty; CFETS = China Foreign Exchange Trade System; CHATS = Clearing House Automated Transfer System; CMU = Central Moneymarkets Unit; CNAPS = China National Automatic Payment System; CSDCC = China Securities Depository and Clearing Corporation; eDVP = electronic delivery versus payment; ETP = electronic trading platform; HKMA = Hong Kong Monetary Authority; HNX = Hanoi Stock Exchange; HVPS = High Value Payment System; IFTS = Interbank Funds Transfer System; JASDEC = Japan Securities Depository Center; JGBCC = Japan Government Bond Clearing Corporation; KRX = Korea Exchange; KSD = Korea Securities Depository; MAS = Monetary Authority of Singapore; MEPS = MAS Electronic Payment System; OTC = over the counter; PBOC = People's Bank of China; PDEx = Philippine Dealing and Exchange; PDTC = Philippine Depository and Trust Corporation; PhilPaSS = Philippine Payments and Settlement System; PSMS = Pre-Settlement Matching System; PTI = post-trade integration; RENTAS = Real-time Electronic Transfer of Funds and Securities; RoSS = Registry of Scripless Securities; RTGS = real-time gross settlement; SGS = Singapore government securities; SSDS = Scripless Securities Depository System; SSE = Shanghai Stock Exchange; STP = straight-through processing; SZSE = Shenzhen Stock Exchange; TCH = Thailand Clearing House; TSD = Thailand Securities Depository; VSD = Vietnam Securities Depository

Source: ABMF SF2.

2. Regulatory Vacuum in Private Placement

The regulatory vacuum in private placement in some of the domestic markets can be seen as a place of future improvement of the securities laws to be put properly as a regulated and an exempted private placement market to be taken up in tandem with their development stages.

That sort of clearly stipulated private placement scheme will be an opportunity to propose a regional self-regulatory framework for qualified market participants in the future.

Table 2.2 Existence of Exempt Regimes

Jurisdiction	Existence of Exempt Regimes Exempt securities/Exempt transactions (Private Placement)
People's Republic of China	-
Hong Kong, China	Yes.
Indonesia	No. Private placement (to less than 100) is not regulated in Indonesia.
Japan	Yes.
Republic of Korea	The Qualified Institutional Buyer system (and professional only market) will be launched in May 2012 under the revised Financial Services Commission Regulation on Issuance, Public Disclosure, etc. of Securities.
Malaysia	Yes.
Philippines	Yes.
Singapore	Yes.
Thailand	Yes.
Viet Nam	No. Private placement (to less than 100) or sale to professional investors is clearly stipulated in the amended Securities Law. However, private placement is not regulated as an exempted scheme.

Source: ADB Consultants, based on research materials and market visit information.

3. Bondholder Representative and/or Trustee

The concepts of bondholder representative, commissioned bank, and trustee are gaining popularity and are evolving. For example, the new *Commercial Code* in Republic of Korea, which will come into effect in 2012, is re-defining the role of commissioned banks.

Table 2.3 Status of Concepts of Commissioned Company, Bondholder Representative and Trustee

Jurisdiction	Name of the system	Status of Concepts of Commissioned Company, Bondholder Representative and Trustee
People's Republic of China	Commissioned company	• Enterprise bonds have this concept; whether it works is untested.
Hong Kong, China	Trustee	• The appointment of a trustee is done under provisions of the Trust Indenture. • The appointment of a trustee is not mandatory. • No recent issues or programs featured the concept of trustee.
Indonesia	*wali amanat* (Trustee)	• Bapepam-LK has guidelines for registration and the duties as trustee. • Trustees must make a contract, *perwaliamanatan*, with the corporate issuer in accordance with the conditions set out by Bapepam-LK.
Japan	Commissioned person or Commissioned company	• Stipulated in *Companies Act*. • It shall not be applied in case bond minimum unit is JPY100 million or more.

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Table 2.3 continuation

Jurisdiction	Name of the system	Status of Concepts of Commissioned Company, Bondholder Representative and Trustee
Republic of Korea	Commissioned company (Revised *Commercial Law* which will take effect in 2012)/(Old *Commercial Act*)	• Stipulated in the revised *Commercial Act*. • The appointment of a commissioned company is not mandatory. • The appointment of a commissioned company is done under provisions of the Trust Indenture.
Malaysia	Trustee	• Trust deed and trustee is required; based on *Trustee Corporation Act*. • Trustees should be approved by the Securities Commission (SC) and listed on the SC website. • AAA issuers may not need a trustee, but such issues need to be approved by SC, and default definitions need to be included in bond issue documentation.
Philippines	Trustee - for Public offering. Facility Agent (FA) - for Private placement	• Public offering of bond issues typically has a trustee. • Corporate bond issuers must appoint a trustee. • Private placements require an FA, which functions as a trustee and fiscal agent; in the absence of specific regulations, issue documentation would indicate that the FA works on behalf of investors.
Singapore	Trustee	• An issuer must appoint a suitable trustee to represent the holders of its debt securities listed on the Exchange. However, a trustee is not required for a debt issue that is offered only to sophisticated or institutional investors and is traded in a minimum board lot size of SGD200,000 or its equivalent in foreign currencies following listing. (Refer to article 308 "Part IV Trustee and Trust Deed" of Chapter 3 (Debt Securities) of the Singapore Exchange Main Board Listing Rules for detailed information on the suitability of the trustee and the provisions to be included in the trust deed.)
Thailand	Bondholder Representative or Trustee	• No trustee concept for bonds; but bondholder representative (BR). • BR has fiduciary duty, plus any duty and liability set out in the terms and conditions; both appointment of BR and actual terms and conditions need to be registered with the Securities and Exchange Commission. • Indenture agreements in bond issues can specify a trustee or BR. The trustee oversees bondholder rights, including the filing of claims and demand payments from the issuer or guarantors. Bondholders can sue and claim for damages from the trustee in case the trustee acts in bad faith or causes damages to bondholders.
Viet Nam		• In Viet Nam, there is no official concept of the meetings of bondholders yet.

Source ADB Consultants, based on research materials and market visit information.

4. Common Law and Civil Law Traditions

Although market regulations in the region vary in many ways, this does not mean that harmonization is impossible. Markets can be categorized into different groups if regulations are viewed from certain angles. For instance, markets with common law tradition, such as Singapore, Malaysia and Hong Kong share the same trustee concept. Markets with civil law tradition like China, Indonesia, Japan, Republic of Korea, Thailand, and Viet Nam, while they may not have the concept of trustee, support the concept of an entity acting for bondholders; names, roles, fiduciary duties and type of institutions, though, may differ (i.e., bondholders representative or commissioned bank, etc.). Generally, if the details are examined, the differences may not be as significant.

Table 2.4 Legal Tradition

Jurisdiction	Original Legal Tradition	Influences
People's Republic of China	Civil law or civil law system	English law, United States (US) law, Japanese law
Hong Kong, China	UK law, Common law	
Indonesia	Islamic law, Dutch law, Civil law or civil law system	US law
Japan	Civil law or civil law system	English law, US law, European Union law
Republic of Korea	Civil law or civil law system	English law, US law, Japanese law
Malaysia	English law, Common law, Islamic law	
Philippines	Spanish law	US law

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Table 2.3 continuation

Jurisdiction	Original Legal Tradition	Influences
Singapore	English law, Common law	(Australian law)
Thailand	Civil law or civil law system	English law, US law, Islamic law
Viet Nam	Civil law or civil law system	French law

Source: ADB Consultants, based on research materials and market visit information.

5. Different Requirements for Identifying Investors and Beneficial Owners

Requirements for identifying investors and beneficial owners are different in several countries or jurisdictions. For instance, China does not allow omnibus accounts, even for International Central Securities Depositories (ICSD), while the Republic of Korea recently revised its regulation to allow omnibus accounts for ICSDs only. This, on the other hand, is allowed in Japan and in ASEAN markets. However, there is a growing tendency or desire among regional regulators to increase monitoring.

Table 2.5 Requirements for Identifying Investors and Beneficial Owners

Jurisdiction	Regulators' Policy related to the Necessity of Disclosure of Ultimate Beneficial Owner	Direct or indirect Account Holding System
People's Republic of China	Yes. Beneficial owner to be disclosed.	
Hong Kong, China	No policy	Both
Indonesia	No requirement by law. Typically grouped by tax rate or domicile.	
Japan	No policy	Direct. (Account holders have the rights directly against issuers)
Republic of Korea	No policy	Direct
Malaysia	No policy	
Philippines	No policy	Registered holders have legal rights against the Issuer.
Singapore	No policy	Both
Thailand	No policy	Indirect
Viet Nam	No policy	Indirect

Source: ADB Consultants, based on research materials and market visit information.

Table 2.6 Existence of Omnibus Accounts or Nominee Concept

Jurisdiction	Existence of Omnibus Securities Account	Existence of Nominee Concept
People's Republic of China	No. Securities must be kept in the name of the beneficial owner.	No.
Hong Kong, China	Yes.	Yes.
Indonesia	Yes.	Yes.
Japan	Yes.	Yes.
Republic of Korea	Yes. But, the foreign exchange regulation in Republic of Korea does not allow omnibus accounts for payments for foreign investors. To avoid this, foreign investors who use International Central Securities Depositories can use their status as Qualified Foreign Investor and are, thus, allowed to make use of omnibus accounts.	Yes. But it cannot be applied to Foreign Investment in Bonds.
	(See details "Contents of Findings, XVII. Omnibus Securities Account/Nominee Concept")	
Malaysia	Yes.	Yes.
Philippines	Yes.	Yes.

continued on next page

Table 2.6 continuation

Jurisdiction	Existence of Omnibus Securities Account	Existence of Nominee Concept
Singapore	Yes.	Yes.
Thailand	Yes.	Yes.
Viet Nam	Yes.	No.

Source: ADB Consultants, based on research materials and market visit information.

6. Public Offering and Private Placement

Two general approaches are observed in the markets when it comes to public offering:

(1) Full disclosure with specific exemptions and

(2) A clearly defined disclosure regime.

Markets are united in referring to public offerings as specified disclosure to all potential investors, whereas private placement or private offerings mean limited disclosure to only a specific investor group. However, a private offer does not mean no disclosure or no underlying regulations. In some markets, there exists a regulatory vacuum in private placement as mentioned previously. In the near future, a specific offering within professional market(s) could cover elements of both concepts of public and private offering.

Among the markets covered in the research, Hong Kong and Singapore are closer to international markets in terms of development; other ASEAN+3 markets are still developing.

Generally speaking, creating a common platform for issuance and investment of bonds among ASEAN+3 countries may not be that difficult since the necessary underlying concepts are already in place. This may also negate the discussion on whether to pursue onshore or offshore access to such a market.

Table 2.7 Existence of Exempt Regimes

Jurisdiction	Existence of Exempt Regimes (Exempt Securities or Exempt Transactions in Private Placement)
People's Republic of China (PRC)	"Self-regulatory Rules for Inter-bank Bond Market Non-financial Enterprise Debt Instrument on Private Placement" provides for the process involved in private-placement instruments including issuance, registration, trading, and information disclosure, among others. Exempt regime is not applied in the PRC.
Hong Kong, China	Yes.
Indonesia	No. Private placement (to less than 100) is not regulated in Indonesia.
Japan	Yes.
Republic of Korea	Yes. The Qualified Institutional Buyer (QIB) system (and Professional only market) will be launched in May 2012 under the revised Financial Services Commission Regulation on Issuance, Public Disclosure, etc. of Securities. Korea Financial Investment Association regulation on management of the QIB system will be enacted before May 2012.
Malaysia	Yes.
Philippines	Yes.
Singapore	Yes.
Thailand	Yes.
Viet Nam	No. Private placement (to less than 100) or sale to professional investors is stipulated in the amended Securities Law clearly. But private placement is not regulated as an exempted scheme.

Source: ADB Consultants, based on research materials and market visit information.

7. Definition of Professional Investors

Defining professional investors is critically important to the next phase of ASEAN+3 Bond Market Forum (ABMF) discussions, as described in section C. Currently, there are varying definitions of professional investors where they exist. For instance, Indonesia acknowledges the concept but does not define it by law. In the case of Japan, the concept is clearly defined in recent legislation to create the TOKYO PRO-Bond Market. Malaysia does not have a direct definition, but the *Capital Markets and Services Act of 2007* (CMSA) contains relevant provisions on how excluded offerings of bonds could be made to institutional and high net worth investors. Thailand has specific definitions for institutional investors.

Table 2.8 Existence of the Concept of Professional Investor

Jurisdiction	Existence of a clear Definition of Professional Investor Concept
People's Republic of China	• No concept or definition of 'professional' (investor) is evident in Chinese law. The People's Bank of China is mulling over the concept of Qualified Institutional Buyer (QIB).
Hong Kong, China	• Professional investor is defined in section 1 of Part 1 of Schedule 1 to the *Securities and Futures Ordinance*, etc.
Indonesia	• Indonesia does not have specific definitions on this type of professional investors. Bapepam-LK is working on a definition of Professional Investor. Private placement (to less than 100) is not regulated in Indonesia.
Japan	• The *Financial Instruments and Exchange Act* stipulates a definition for Specified (Professional) Investor and Qualified Institutional Investor.
Republic of Korea	• The *Financial Investment Services and Capital Markets Act* classifies a Professional Investor. But the Republic of Korea so far does not have an exempt regime for Professional Investors. The Republic of Korea will launch the QIB market, which is an exempt regime for Professional Investors in May 2012.
Malaysia	• Sophisticated Investor is not explicitly defined in the *Capital Market and Services Act 2007* (CMSA). However, the CMSA exempts sophisticated or professional investors from prospectus requirements.
Philippines	• *Securities Regulation Code* (SRC), SRC Rules, Over-the-Counter Rules and Qualified Buyer Rules clearly define Qualified Buyer, Qualified Individual Buyer and Qualified Institutional Buyer. SRC specifies sale to Qualified Buyers as transaction exempt from registration.
Singapore	• Under *Securities and Futures Act*, Accredited Investor and Institutional Investor are defined. Exemptions to prospectus requirements include exemptions for offers that are made only to institutional investors and accredited investors, etc.
Thailand	• "Notification of Securities and Exchange Commission (SEC)" defines Institutional Investors and High Net Worth Investors. Private Placement of corporate bond offers to institutional investors will be exempted from obligation to file disclosure documents to SEC.
Viet Nam	• The *Securities Law* defines Professional Securities Investor. The Amended Securities Law defines Non-public offering of securities (Private placement) (to less than 100, etc.).

Source: ADB Consultants, based on research materials and market visit information.

Table 2.9 Existence of Professional Investor-Only Market

Jurisdiction	Existence/Status Quo of the Professional Investors Only Market
People's Republic of China	Does not exist. But the Inter-bank Bond Market consists of institutional participants only. The People's Bank of China is considering the Qualified Institutional Buyer (QIB) concept.
Hong Kong, China	The Hong Kong Exchanges and Clearing Limited has performed market consultation on some proposed changes to the requirements for the listing of debt issues to professional investors only in December 2010 and the Rule amendments were effected in November 2011.
Indonesia	Does not exist.
Japan	Exists. TOKYO PRO-BOND market with listing on the TOKYO AIM.
Korea	The QIB market and trading system will be launched within 2012.
Malaysia	The Securities Commission and Bank Negara Malaysia introduced 'Exempt Regime.'
Philippines	Exemptions are granted for particular securities and transactions.
Singapore	Exists. There is a market for professionals which are exempted from prospectus requirements.
Thailand	Private Placement is exempt from full filing requirement.
Viet Nam	Does not exist.

Source: ADB Consultants, based on research materials and market visit information.

8. Documentation Language

With regards to documentation language, there is a need to study this area in greater detail. Some jurisdictions have added other languages for documentation. One such case is in Hong Kong, China where Chinese is now an acceptable documentation language.

9. Defining Self-Regulatory Organizations

The definitions of SROs may differ by market but their functions are comparable.

Table 2.10 Definitions of Self-Regulatory Organizations

Jurisdiction	Name	Main Functions
People's Republic of China	Inter-bank Bond Market (National Association of Financial Market Institutional Investors [NAFMII]) In 2007, NAFMII was officially established.	**NAFMII** is mainly responsible for the self-regulatory management of the over-the-counter (OTC) market. The establishment of NAFMII fills in the void of a self-regulatory organization (SRO) in the OTC market, forming a market management mode that comprises both government supervision and market self-regulatory management. • **Promoting investor protection mechanism.** NAFMII is promoting the investor protection mechanism in the non-financial enterprise debt capital market and formulated self-regulatory normative documents such as the "Rules for Meetings of Non-financial Enterprise Debt Holders in the Inter-bank Bond Market." 1. **Guiding and regulating market** with the "Self-Governing Rules and Standardization of Management system of the Market." 2. **Further deregulation** for issuance of bonds and notes in the inter-bank market.
Hong Kong, China	--	No SROs in Hong Kong bond market.
Indonesia	1. The Indonesia Stock Exchange (IDX) 2. The Indonesian Central Counterparty 3. The Indonesian Central Securities Depository --- Each regulates its own areas of operations, subject to Bapepam-LK approval.	As one of the three SROs of the capital market licensed by Bapepam-LK, **IDX**: (1) facilitates and regulates the Exchange. Specifically, it discusses, prepares, acquires approval from Bapepam-LK, issues, and changes L**isting Regulations, Trading Regulations and Membership Regulations;** (2) **develops a mechanism for organizing and monitoring the Exchange;** (3) **implements Good Corporate Governance practice** based on IDX's Corporate Governance Principles; and (4) **develops infrastructure and technologies projects** with other SROs. To produce professional human resources that can encourage capital market growth, together with other SROs, IDX **formed the Association of Indonesian Capital Market Education (P3MI). In 2010, P3MI**, in cooperation with University of Indonesia (UI), founded Indonesia Capital Market Institute (TICMI). TICMI is focusing on giving education and training skills to candidates aspiring to become underwriters, investment managers and broker/dealers.

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Table 2.10 continuation

Jurisdiction	Name	Main Functions
Japan	Japan Securities Dealers Association (JSDA), Tokyo Stock Exchange Group (TSE), TOKYO AIM	**JSDA** is the full-fledged SRO for the securities industry in Japan. It issues a variety of rules and market practices/guidelines for bond market participants. Rules: When JSDA members violate these rules, they are subject to disciplinary action by JSDA. JSDA takes into account market conditions and the practical reality of transactions in establishing, revising and abolishing rules for the purpose of achieving fair and smooth transactions in the Japanese market, thereby contributing to the protection of investors. During the rule-making procedure, a draft of rules is prepared first through deliberations mainly by JSDA members. The draft is then subjected to public comment and other processes, and finally approved by JSDA. Guidelines: Guidelines are practical rules that JSDA requests participants in the bond market to comply with (thus recognized as "best practice"). As they are merely practices, those who do not comply are not penalized. However, as voluntary compliance with these guidelines by the overall market contributes to smooth and efficient transactions, most market participants observe the guidelines. Consequently, JSDA collects and considers the opinions of market participants when setting new guidelines or revising /abolishing old ones. Standard Procedures, etc.: Besides the above, JSDA issues from time to time notices to members in advance regarding standard procedures, etc. **TSE's role as a self-regulatory organization:** It examines companies to assess their suitability as listed companies. It requires these companies to comply with disclosure requirements so that investors are able to make informed decisions, and it provides a market place for those companies' securities to be traded. Pursuant to the Financial Instruments and Exchange Act (FIEA), TSE has self-regulatory functions to maintain a transparent, equitable and reliable market. The TSE has two units in relation to its self-regulatory function: (1) the Listing Regulation Unit deals with issues related to listing and (2) the Compliance Unit deals with issues related to trading participants. Self-Regulation Punishment and Dealing with Offenders: TSE Regulation handles any trading participant that violates the law or stock exchange rules in accordance with article 34 of the official trading participant regulations. The "Disciplinary Committee" is an advisory body that, in addition to conducting inquiries, also handles penalty funds, censure, trading suspension, and limiting or canceling trading capabilities, etc. **TOKYO AIM's Role as TOKYO PRO-BOND Market SRO:** TOKYO PRO-BOND Market-related rules and regulations are provided by TOKYO AIM. TOKYO AIM is an SRO for the TOKYO PRO-BOND Market. Disclosure requirements under the FIEA such as Securities Registration Statements do not apply to the securities listed on the TOKYO PRO-BOND Market. JSDA and TOKYO AIM: Trading on the OTC market is regulated under the JSDA's Self-regulatory Rules and Guidelines for the Bond Market. "TOKYO AIM's TOKYO PRO-BOND Market Listing Regulations and Enforcement Rules" and "JSDA's Self-regulatory Rules and Guidelines for the Bond Market" have a mutually important and complimentary relationship.
Republic of Korea	Korea Financial Investment Association (KOFIA), Korea Exchange (KRX)	**KOFIA** is an incorporated membership organization created to maintain business order between members, assuring fair trade, protecting investors, and promoting the sound development of financial investment services. Members of KOFIA are financial investment firms, general administration companies, collective investment scheme management companies, bond assessment companies and members under the conditions prescribed by the articles of KOFIA. KOFIA aims to promote fair business practices among member companies, create a fair business culture in the securities trading market, and maximize the function of investor protection. As such, KOFIA undertakes such activities as self-regulation to protect investors and maintain market order among member companies; dispute mediation between members regarding their business activities; registration and management of investment advisers and managers; management of OTC trading for non-listed stocks and non-listed and listed bonds; and establishment of dispute mediation rules for self-mediation of conflicts in the industry. **KRX** aims to fix and stabilize fair prices in the transactions of securities and exchange-traded derivatives, and facilitate the stability and efficiency of other transactions. It established and operates the stock market, the KOSDAQ Market, and the derivative market. Under the Financial Investment Services and Capital Markets Act, the stock market is established for the trading of securities, such as debt securities, equity securities, beneficiary securities, investment contract securities, derivative-combined securities, and securities depositary receipts.

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Table 2.10 continuation

Jurisdiction	Name	Main Functions
Malaysia	Bursa Malaysia, Financial Market Association of Malaysia (ACI Malaysia, quasi SRO)	**Bursa Malaysia (Exchange):** Securities Commission Malaysia (SC) is the primary regulator of the Exchange. The SC relies on Bursa Malaysia to perform extensive regulatory functions that extend beyond their market operations, including regulating members' business conduct. Bursa Malaysia is also responsible for marketplace surveillance. Bursa Malaysia, on behalf of the SC, supervises and enforces disclosure standards for listed companies. It adopts a thematic approach to achieve the goals and objectives of ensuring effective market regulation. Under this approach, in discharging its regulatory role, Bursa Malaysia will focus on certain key themes. These themes are regularly reviewed to ensure relevance in a progressive environment. The six themes are as follows: (1) Enhancing standards of corporate governance among listed issuers, (2) Improving standards of disclosure, (3) Promoting high standards of business conduct and self-regulation among brokers, (4) Enhancing the effectiveness of enforcement, (5) Elevating the level of education and awareness in the industry, and (6) Managing crisis in light of the global financial turmoil. **Financial Market Association of Malaysia (ACI Malaysia):** The Bond Dealers Association was established in June 1996 to represent the industry's views and work with regulatory authorities to promote the bond market. On the other hand, ACI Malaysia was established in 1974 to monitor, develop and improve industry standards, and to bring them in line with international best practice. ACI Malaysia, whose membership comprises staff from treasury operations of Malaysia's financial institutions (including insurance companies), has adopted a Code of Conduct for the industry. To qualify as a member of ACI Malaysia, a rigorous qualifying examination must be passed. ACI Malaysia qualifies as an SRO in its function and actions; however, ACI Malaysia has not yet been conferred official SRO credentials.
Philippines	PDS Group (Philippine Dealing and Exchange [PDEx])	The Securities and Exchange Commission granted PDEx the license to act as an SRO for the Inter-Dealer, Inter-Professional and Public Markets. As an SRO, PDEx has adopted the PDEx Rules that governs all transactions dealt on the PDEx Trading Platform for fixed-income securities.
Singapore	Singapore Exchange (SGX)	Being a listed exchange and frontline regulator, SGX is considered an SRO. SGX serves as an SRO for the markets and clearing houses that it operates in Singapore. It works closely with relevant regulatory authorities, including the Monetary Authority of Singapore and the Criminal Affairs Department, to develop and enforce rules and regulations to build an enduring marketplace. SGX bears commercial responsibilities in addition to its regulatory duties. While this dual role may present conflicts, SGX has established a framework to manage such conflicts. SGX undertakes various regulatory functions to promote a fair, orderly and transparent marketplace as well as a safe and efficient clearing system. These functions are handled by the following regulatory departments: (1) Issuer Regulation, (2) Catalyst Regulation, (3) Member Supervision, (4) Market Surveillance, (5) Enforcement, (6) Risk Management, (7) Clearing Risk, and (8) Regulatory Development and Policy.
Thailand	Thai Bond Market Association (ThaiBMA), Exchanges	ThaiBMA is an SRO licensed to run an efficient market and act as an information center for the secondary bond market. It is responsible for developing the market, establishing market conventions and standards, and acting as a bond pricing agency. It also provides a forum for market professionals to move towards a more mature and sophisticated Thai bond market. The membership of ThaiBMA can be classified into three types, each of which is subject to different membership fees and requirements: (1) Ordinary members are dealers. (2) Extraordinary members are inter-dealer brokers. (3) Associate membership is provided for a dealer that has monthly average trading value in the past one year of less than THB100 million per month. Roles and functions of Thai BMA as an SRO: ThaiBMA oversees and monitors the conduct of its members to ensure fairness and efficiency in debt securities trading. It is committed to retaining the confidence of its membership, regulators and investors. It performs market monitoring and surveillance to ensure that all trading activities comply with relevant laws and regulation, and act as the front line to detect any unfair trading

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Table 2.10 continuation

Jurisdiction	Name	Main Functions
		practices. It established the Ethics and Code of Conduct for members and traders. It also issues rules and guidelines regarding debt securities trading and good market practice. ThaiBMA is also responsible for bond trader examination and registration and provide them with ongoing education to enhance their professionalism. In addition, it determines enforcement procedures to penalize those who do not comply with the regulation. There is a Memorandum of Understanding (MOU) between the Securities and Exchange Commission and ThaiBMA regarding Bond Market Supervisory Cooperation. Exchanges are regarded as SRO in Thailand.
Viet Nam	Vietnam Bond Market Association (VBMA) In August 2008, the Ministry of Finance approved the list of the Preparation Committee for establishing the VBMA. On 22 May 2009, the Minister of Interior issued an official decision allowing the establishment of the VBMA.	VBMA is regarded as Viet Nam's bond market SRO. VBMA is a non-profit organization aimed to promote the professional and effective development of the Viet Nam bond market, guarantee the legitimate rights and interests of members, and, at the same time, ensure national interests. VBMA's roles and functions: (a) Standardize trading practices and market conventions for bonds and other debt instruments of similar nature in the Vietnamese bond market; (b) Enhance regional and international integration of the bond market, in general, and of the members, in particular, by encouraging the adoption of global best practices by market participants under the conditions of the Vietnamese bond market; (c) Establish the code of conduct and ethics to govern the relationship of market participants to ensure the equality; (d) Improve market expertise and skills by conducting activities to aggregate and analyze bond information, consulting, training and provision of facilitating services to members and other related participants in trading bonds and other debt instruments of similar nature in the Vietnamese bond market; (e) Serve as a forum and bridge for exchanging and updating bond information, for strengthening collaboration and mutual understanding among its members and between its members and the Vietnamese regulatory authorities, as well as related international organizations; to make comments on related policies; to support the state competent bodies in improving policies and legal framework for the bond market in Viet Nam; and (f) Update, aggregate, store and build a database on bond market information, thus helping increase transparency in the Vietnamese bond market.
Source: ADB Consultants, based on research materials and market visit information.		

10. Greater Use and Acceptance of Islamic Bond (or Sukuk) Structure

A growing number of jurisdictions now allows or promotes the use of Islamic structure in the issuance of bonds in the region. In addition to Malaysia (which has the largest market), Indonesia, Thailand, Singapore and Hong Kong, Japan will also launch its regulatory framework for issuance of Islamic bonds or *Sukuk* in its bond market. In general, issuer's obligations under a *Sukuk* issue and risk exposures of investors are not materially different from a conventional bond issue. If at all such material difference exists, it is usually well disclosed in the offering documents.

Table 2.11 Existence of the Islamic Finance Market

Jurisdiction	Existence of the Islamic Finance Market
People's Republic of China	No
Hong Kong, China	Yes
Indonesia	Yes
Japan	Yes
Republic of Korea	No
Malaysia	Yes
Philippines	No
Singapore	Yes
Thailand	Yes
Viet Nam	No
Source: ADB Consultants, based on research materials and market visit information.	

Implications for the Next Phase of the ASEAN+3 Bond Market Forum Sub-Forum 1 (2012–2013)

1. Improve Information Asymmetry

Through the ASEAN+3 Bond Market Forum (ABMF) Sub-Forum 1 (SF1) market guides and this comparative analysis, it is highly expected that the information asymmetry evident in many places will be improved with the intention to attract more attention from investors outside and within the region.

2. Establish an Asian Version of a Professional Bond Marketplace

In the future, ASEAN+3 may consider establishing a common framework similar to the Eurobond market, possibly modeled on the experiences from the Eurobond market's professionals. However, it is important to understand that the current version of European Union (EU) rules or the Eurobond market framework may not be directly applicable to Asia; hence, it may be necessary to establish an Asian version of such marketplace.

3. Key Objectives for the ASEAN+3 Bond Market Forum Phase 2

Thus, the key objectives for ABMF Phase 2 will be to facilitate cross-border or intra-regional initiatives of issuance and investment of bonds.

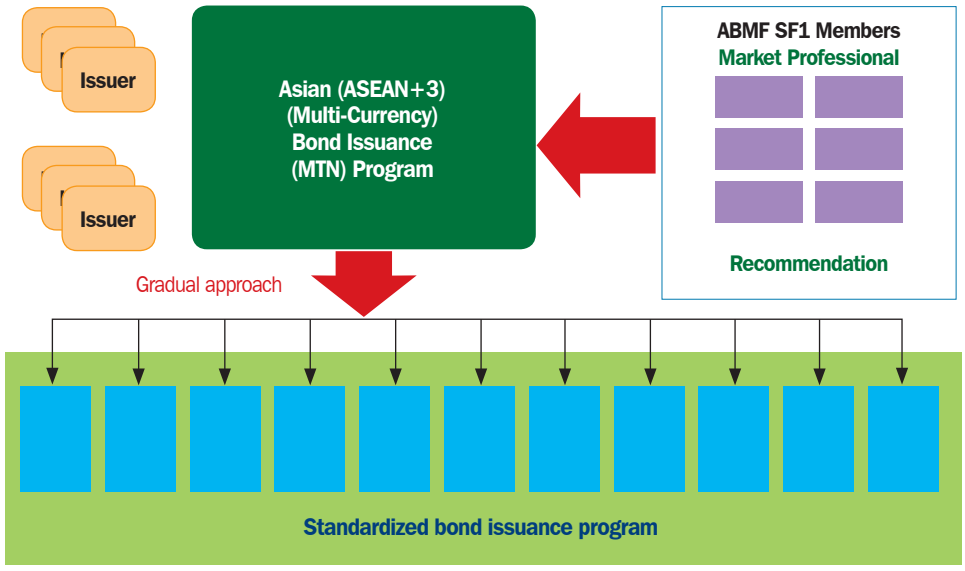
4. The Preferred Approach

The preferred approach might focus on a professional-markets or exempted-markets regime (including laws stipulating private placement), which waives full-disclosure requirements for ordinary public offerings to professional investors across jurisdictions. This might lead to the creation of an intra-regional professional marketplace populated only by qualified investors and issuers.

5. Key Outcomes

The ABMF SF1 Phase II key outcome would be an organized and well-documented Intra-regional Professional Market, evident through a bond issuance program with regional standardization of documentation. Such regionally standardized bond issuance program should lead to a regional medium-term note (MTN) program that will be committed to open up the markets to qualified issuers and investors in the region and beyond.

Figure 2.2 Regional Standardization of Documentation

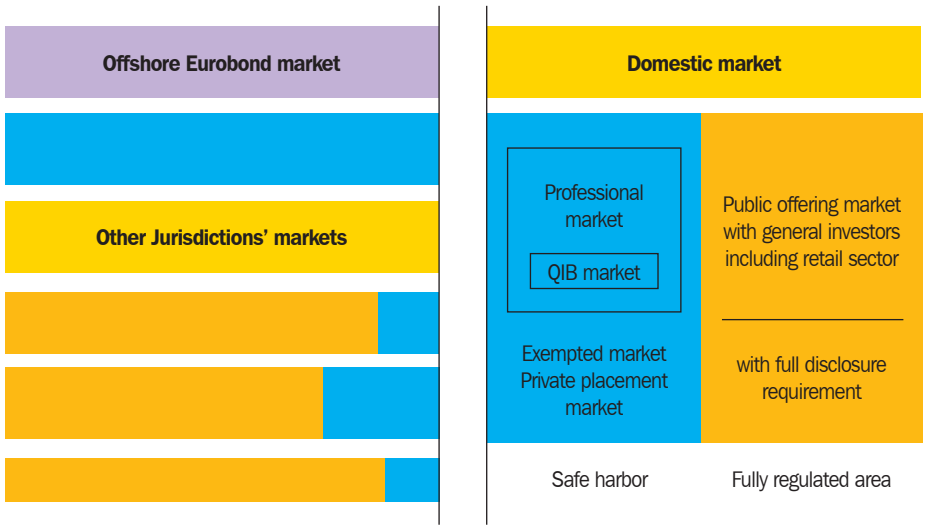


Source: ADB Consultant.

6. Indispensable Conditions for Realizing an Inter-Regional Professional Bond Market

a. **Understanding and recognition among regulators and policy makers**. For this proposal to be accepted, it is important to achieve a common understanding and mutual recognition among regulatory authorities and/or policy makers in the region. Mutually recognizing the common denominators––the concept of professionals, exempted market conditions, and so on––will be important for the discussion.

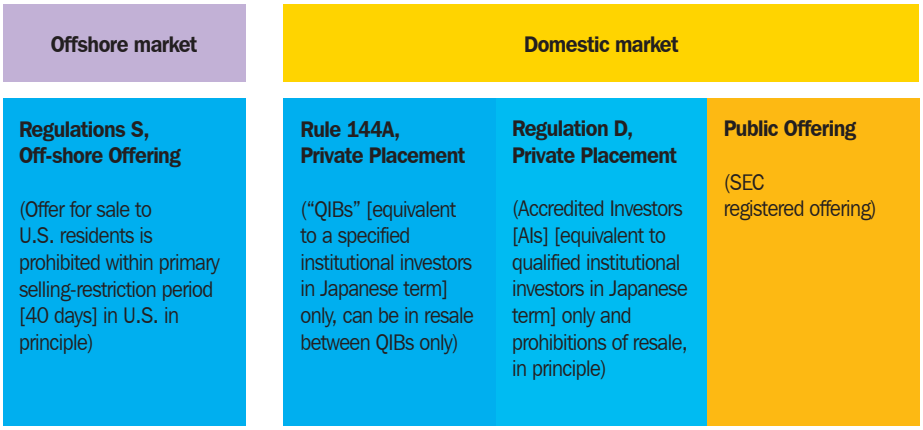
Figure 2.3 Exempted Market versus Full Disclosure Market



QIB = Qualified Institutional Buyer
Source: ADB Consultant.

This concept would be similar to, but not completely congruent, with the present state of the US bond market, which is divided into market segments illustrated in Figure 2.4.

Figure 2.4 Comparative Structure of US Domestic and Offshore Markets



QIB = Qualified Institutional Buyer; SEC = Securities and Exchange Commission
Source: ADB Consultant.

b. **Taking a gradual approach.** In taking a gradual approach, SF1 will start with what can be done within the scope of current legislation and regulation in each jurisdiction, and without the intention to change the laws and regulations.

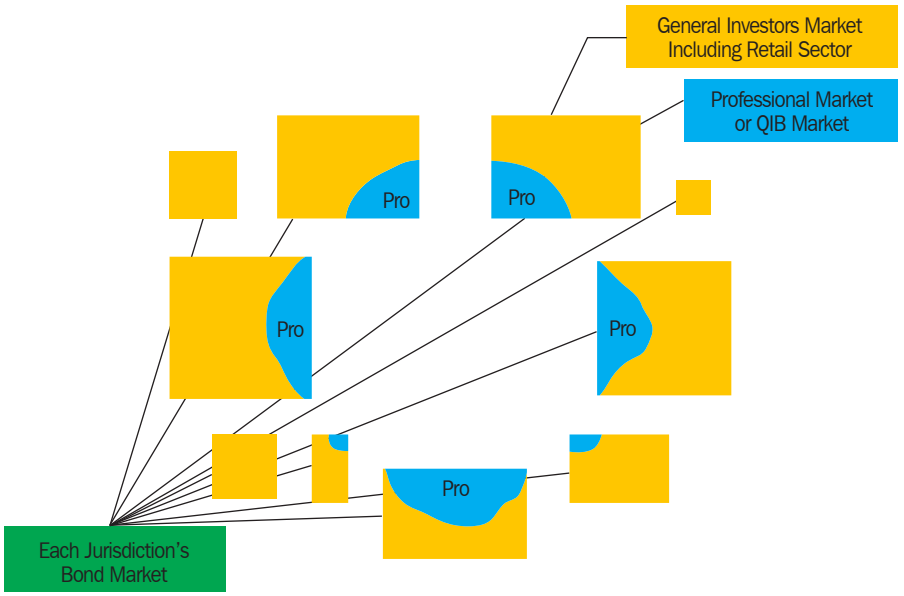
7. Expected Result of Mutual Recognition Approach or Convergence Approach

a. Member markets or jurisdictions can define a common, general and multi-facetted set of goals or objectives, which are non-binding, but recommended for all markets.
b. Jurisdictions would be able to make their own way towards these goals or objectives, i.e., a roadmap or defined path for each market would be required.
c. This would allow discussing individual subjects by themselves, together or in parallel, summarizing results in a future report easily.

8. Establishing an Integrated Intra-Regional Professional Bond Market

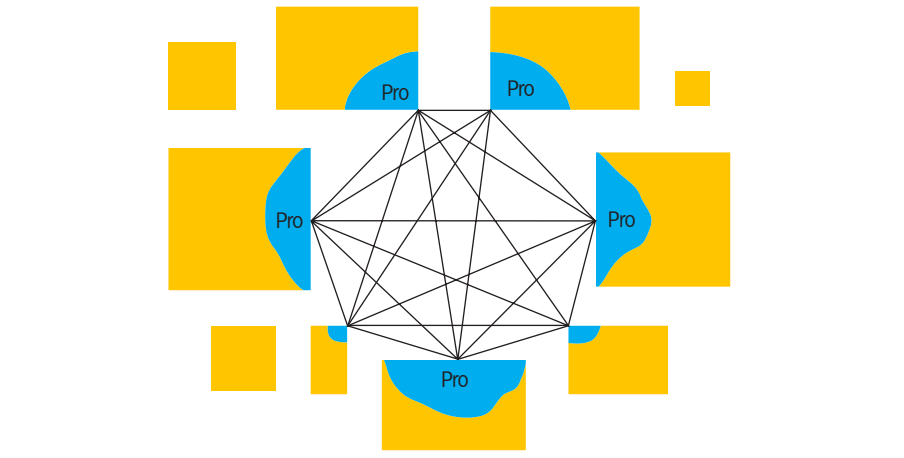
The first emphasis should clearly be on efforts to allow cross-border transactions within the domestic bond markets, with a goal to arrive at a mutually recognized and accepted framework for these transactions. This envisages a development of the markets from their present, fragmented state (as shown in Figure 2.5) to a group of markets connecting and agreeing on the key elements of a future common market (as shown in Figure 2.6), to ultimately create a common market by combining all the elements in a common marketplace (as shown in Figure 2.7).

Figure 2.5 Status Quo of Asean+3 Bond Markets



QIB = Qualified Institutional Buyer
Source: ADB Consultant.

Figure 2.6 Connecting the Professional Market Elements in the Region



QIB = Qualified Institutional Buyer
Source: ADB Consultant.

Figure 2.7 Creation of an Intra-Regional Bond Market

Source: ADB Consultant.

The intention is to create a common 'safe harbor' for market participants within the ASEAN+3 markets on the basis of the most beneficial regulations. It is, thus, possible to create an integrated intra-regional professional bond market!

With qualified issuers and investors currently restricted to access many domestic bond markets in the region, it should be possible to establish common rules with reasonable efforts.

9. Connecting Each Market

Under the proposed mutual recognition approach, cross-border flows of "Professional Securities" in both primary and secondary markets have to be granted "mutual recognition between jurisdictions with the following exemptions (1–4)."

Mutual (A and B) recognition between jurisdictions:

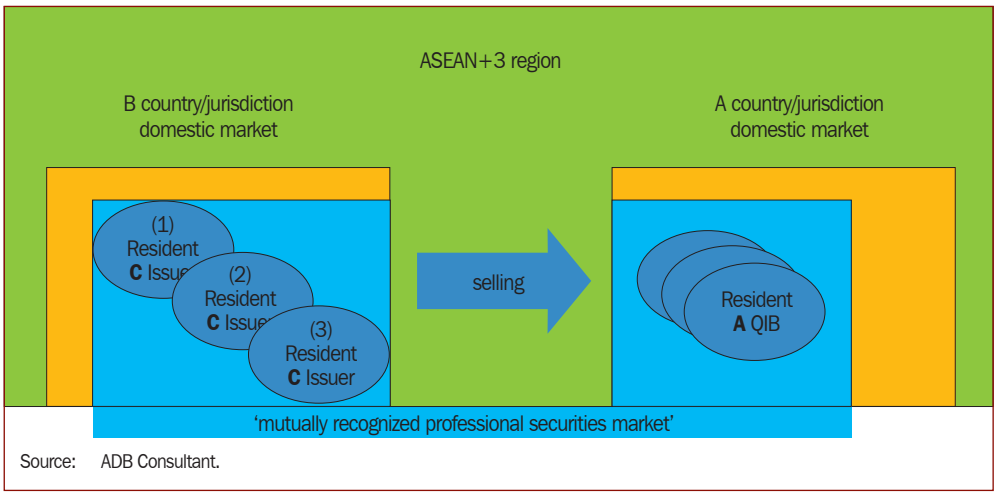
(1) Selling restriction on Qualified Institutional Buyer (QIB) in jurisdiction A to invest in resident A issuers' securities issued in 'mutually recognized professional securities market' in jurisdiction B to be exempt.

(2) Selling restriction on QIB in jurisdiction A to invest in resident B issuers' securities issued in 'mutually recognized professional securities market' in jurisdiction B to be exempt.

(3) Selling restriction on QIB in jurisdiction A to invest in resident C (other jurisdiction in the region) issuers' securities issued in 'mutually recognized professional securities market' in jurisdiction B to be exempt.

(4) Resale (secondary market transactions) of the bonds between professional markets in jurisdiction A and B shall not be restricted.

Figure 2.8 Mutual Recognition Examples (1), (2), (3)



Source: ADB Consultant.

10. Envisaged Area of Discussion in ABMF Phase II

With a view on the findings summarized above and the projected development of the ASEAN+3 bond markets, it is envisaged to begin discussions on the following subjects in ABMF Phase II.

(a) Laws and regulations and Self-Regulatory Organization (SRO) rules in each jurisdiction.

(i) Recognize common denominator of the concept of professional investor, sophisticated investor, accredited investor, and QIB, among others;
(ii) Mutually recognize exempted market conditions, including private placement;
(iii) Standardize level of information disclosure and/or disclosure rules;
(iv) Investor protection needs and existing regulations;
(v) Participants and participants' code of conduct; and
(vi) Types of securities suitable (for future market).

(b) Market practices and functions of each domestic SRO

(i) Standardize related documentation in offering circulars, etc.;
(ii) Standardize new issue underwriting procedures;
(iii) Standardize rules and practices for secondary market making; and
(iv) Synchronize the concept of eligible issuers.

11. Success Factors of a Mutually Recognized Professional Market

The success of a mutually recognized professional market in the region rests on:

(i) The degree of maturity of each national securities legislation or law to be applied for investor protection;
(ii) Established condition of fair price formation in the capital market;
(iii) Situation of the fixing of the code of conduct among market participants; and

(iv) The proper functioning of each domestic SRO.

Each jurisdiction will be expected to set its own objectives based on its market condition.

12. Discussion about Self-Regulatory Organizations

A general discussion about a regional SRO in ABMF SF1 is not necessary for the time being, since it is not an indispensable factor for the design of new markets. The realization of a common SRO for ASEAN+3, in the spirit of the International Capital Market Association (ICMA) is, however, a future possibility.

SRO-related discussions are always limited to a single market under one single jurisdiction, complimenting a particular regulator. This is reflected in the International Organization of Securities Commission definition of an SRO. In other words, an SRO only functions as a domestic organization in a country or jurisdiction, being either a domestic governmental body, an exchange or a domestic industrial organization, and performing extensive regulatory functions. Therefore, the SRO function will typically not go beyond "domestic on-shore."

Unless a country or jurisdiction qualifies as "good securities law for investor protection," "certain level of governance provided by SROs, etc.," and "good business conducts in the domestic market", other countries or jurisdictions may hesitate to do "mutual recognition" of connecting their domestic professional markets.

13. Conclusion

It is envisaged that the work of ABMF Phase II in 2012 and 2013 will focus on research and discussions about the levels and qualities of certain key market elements, such as disclosure, professional investors and issuers, underwriters and broker-dealers with the objective to connect the domestic professional securities market between countries or jurisdictions.

Details of SF1 Contents of Findings

I. Legal Tradition in the Domestic Capital Markets

Table 1. Legal Tradition in the Domestic Capital Markets

Jurisdiction	Original Legal Tradition	Influences
People's Republic of China	Civil law or civil law system	English law, United States (US) law, Japanese law
Hong Kong, China	English law, Common law	
Indonesia	Islamic law, Dutch law, Civil law or civil law system	US law
Japan	Civil law or civil law system	English law, US law, European Union (EU) law
Republic of Korea	Civil law or civil law system	English law, US law, Japanese law
Malaysia	English, Common law Islamic law	
Philippines	Spanish law	US law
Singapore	English law, Common law	(Australian law)
Thailand	Civil law or civil law system	English law, US law, Islamic law
Viet Nam	Civil law or civil law system	French law

Source: ADB Consultants, based on research materials and market visit information

II. Governing Law for Domestic Bond Issuance

Table 2. Governing Law for Domestic Bond Issuance

Jurisdiction	Governing Law for the Resident Issuer	Governing Law for the Non-Resident Issuer • Non-Resident Issuance of Domestic Bond/Medium-Term Note
	Laws and Regulations Related to the Bond Market	
People's Republic of China	Chinese Law	Chinese Law • Between 2009 and 2010, the ban has been lifted on renminbi-denominated bonds issued by foreign non-banks and local subsidiaries of foreign banks in China. • On 6 April 2010, the State Council distributed "comments on the appropriate work to attract foreign capital" and new policies has been laid out; to select foreign capital related to industrial policies, to attract foreign investment in the Midwest region, and to transfer the authority to attract foreign capital to local governments. Among them, supports have been put forward such as initial public offering and listing by foreign companies, and it is explicitly stated that the scope of foreign companies to issue renminbi-denominated bonds in the domestic market will be gradually expanded.
	1. Major Provisions on Administration of Issuing Treasury Bonds a. *Regulations of Treasury bonds of the People's Bank of China* (Decree of the State Council [1992] No. 95), b. Measures for the Examination and Approval of the Qualifications for the Members of the Government Bond Underwriting Syndicates (Order 39 of Ministry of Finance of the People's Republic of China, the People's Bank of China, and China Securities Regulatory Commission), and c. *Circular on Printing and Distributing the Rules for the Issuance of Book-Entry Treasury Bonds by Tender in 2011* (CK [2011] No.4), etc. **2. Major Provisions on Administration of Issuing Financial Bonds** a. *Provisions Governing the Issuance of Financial Bonds in the National Inter-bank Bond Market* (Order [2005] No. 1 of the People's Bank of China), b. *Administrative Procedures for the Administration on Issuance of Financial Bonds in the National Inter-bank Bond Market* (Announcement [2009] No. 6 of the People's Bank of China),	

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Table 2. continuation

Jurisdiction	Governing Law for the Resident Issuer	Governing Law for the Non-Resident Issuer • Non-Resident Issuance of Domestic Bond/Medium-Term Note
	Laws and Regulations Related to the Bond Market	
	c. *Measures for the Administration on Issuance of Subordinated Bonds by Commercial Bank* (Announcement [2004] No.4 of the People's Bank of China and China Banking Regulatory Commission), d. *Announcement on Relevant Matters Concerning the Issuance of Hybrid Capital Bonds by Commercial Bank* (Announcement [2006] No.11 of the People's Bank of China), e. *Interim Measures for the Administration on Issuance of Renminbi Bonds by International Development Institution* (Announcement [2010] No.10 of the People's Bank of China, Ministry of Finance, National Development and Reform Commission, and China Securities Regulatory Commission), and f. *Interim Measures for the Administration of the Issuance of Renminbi Bonds in Hong Kong SAR by Financial Institutions Within the Territory of China* (Announcement [2007] No.12 of the People's Bank of China and National Development and Reform Commission). **3. Major Provisions on Administration of Issuing Commercial Paper (CP), Super Short-Term CP (SCP) and Medium-Term Notes (MTNs)** a. *Measures for the Administration of Debt Financing Instruments of Non-Financial Enterprises in the Inter-bank Bond Market* (Order [2008] No. 1 of the People's Bank of China) and b. *Auxiliary self-regulatory rules formulated by the National Association of Financial Market Institutional Investors.* Difference in CP may lie in the purpose of the capital raising: project finance (CP) or working capital (SCP). **4. Major Provisions on Administration of Issuing Listed Corporate Bonds** a. Pilot *Rules on the Issuance of Corporate Bonds* (Order 49 of China Securities Regulatory Commission) and b. Relevant rules issued by the stock exchanges. **5. Major Provisions on Administration of Issuing Enterprise Bonds** a. Regulations on *Administration of Enterprise Bonds, Circular of National Development and Reform Commission on Promoting the Development of Enterprise Bonds Market and Simplifying the Matters Relating to the Approval for Insurance* (FGCJ Document [2008] No.7) and b. *Interim Measures for the Administration of Central Enterprise Bonds.*	
Hong Kong, China	Laws of Hong Kong	*Laws of Hong Kong* • Issuers of bonds to be listed on the HKSE should also observe the Trading Rules promulgated by the HKEx • For bonds to be listed on the HKSE, issuers should also observe the requirements of the Listing Rules, as well as Parts II and XII of the CO, including section 44B
	Specific laws governing different types of bonds are summarized as follows: **1. Government bonds:** The issuance of Government bonds is governed by the Loans Ordinance (Chapter 61 of the *Laws of Hong Kong*). On 8 July 2009, the Legislative Council passed a resolution under section 3 of the *Loans Ordinance* authorizing the Government to borrow up to a maximum principal amount outstanding at any time of HKD100 billion or equivalent under the Government Bond Program. **2. Exchange Fund Notes issued by the Hong Kong Monetary Authority (HKMA)** Exchange Fund Notes are issued under the Exchange Funds Ordinance (Chapter 66 of the *Laws of Hong Kong*). **3. Bonds issued by other statutory bodies and government-related corporations** Issuance of bonds is governed by the respective ordinances governing the statutory bodies and/or Companies Ordinance, where applicable. For instance, bonds issued by the Airport Authority, which is a statutory body established under the *Airport Authority Ordinance* (Chapter 483 of the Laws of Hong Kong), are governed by the same ordinance. **4. Bonds issued by private entities** The issuance of bonds by private entities is governed by sections 41, 44A, 44B and 48A of the CO (Chapter 32 of the Laws of Hong Kong), in addition to the SFO. The terms and conditions of the offers are set out in the offer documents, such as the prospectus. In addition to these, an offer cannot be in breach of other Hong Kong law. For details, refer to the Hong Kong Legal Information Institute (HKLII) website. If the bonds are to be listed on the HKSE, in addition to the CO, issuers have to observe the Listing Rules as mentioned above and other relevant rules promulgated by the HKSE. If participants use the clearing, settlement and custody services provided by the CMU, the debt securities settlement system operated by the HKMA, they should observe the relevant rules promulgated by the HKMA.	

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Table 2. continuation

Jurisdiction	Governing Law for the Resident Issuer	Governing Law for the Non-Resident Issuer • Non-Resident Issuance of Domestic Bond/Medium-Term Note
	Laws and Regulations Related to the Bond Market	
Indonesia	Indonesian law	Indonesian law • MTN programs: Indonesian regulatory framework does not specifically address the registration of MTN, but it regulates the registration procedures for bonds and Sukuk. In order to facilitate the issuance of MTN which allows a firm to issue a series of bonds within a particular period with only one registration statement submission, Bapepam-LK released a new regulation on shelf-registration. Under the current regulatory arrangement, if a bond issuance by non-residents is publicly offered, it must follow similar procedures to the issuance by domestic firms, without any exception. It hinders foreign issuers, especially the requirements on domestic supporting professionals.
	Bonds issued by an Indonesian company or the Government of Indonesia offers in Indonesia through public offering and listed on the Indonesia Stock Exchange shall be governed by the laws of the Republic of Indonesia. **Regulation on shelf-registration:** There is a rule related to Sustainable Public Offering (Shelf Registration) based on Peraturan Bapepam dan LK Nomor IX.A.15: Penawaran Umum Berkelanjutan, which allows the debit security or bond (efek bersifat utang, EBU) issued to the public in several stages. An issuer has to submit a Registration Statement of Sustainable Public Offering: (1) In accordance with Peraturan Bapepam dan LK Nomor IX.A.1, IX.A.2, IX.C.1, IX.C.2 and other related regulations. (2) Equipped with a statement from the issuer or public company and accountant, which states that the referred issuer or public company never experienced failure to pay for a certain period. Moreover, issuers also have to submit reports and information as follows: (1) Report of Sustainable Public Offering result to Bapepam-LK at least 5 working days following the date of allotment. (2) Information of reasons for not achieving the target funds (if target acquisition funds are not met). (3) Additional information and supporting documents when issuer is going to issue second and subsequent stages, at least 2 days since the announcement of additional information.	
Japan	Japanese Law	Japanese Law • Local MTN programs: Shelf-Registration: Yes. Japanese Law • Samurai-bond UK (English) law, US (New York [NY]) law, etc. • International MTN programs: Yes.
	1. The Companies Act defines corporate bonds. 2. In cases where a company will issue bonds in Japan, generally speaking, the company must specify a commissioned company or person for bondholders and entrust the receipt of payments, the preservation of rights of claim on behalf of the bondholders and other administration of the bonds to that manager; provided, however, that this shall not apply in cases where the amount of each bond is JPY100 million or more as prescribed by the Companies Act, and other cases prescribed by the applicable Ordinance of the Ministry of Justice as cases where it is unlikely that the protection of bondholders will be compromised. 3. In the Japanese bond market, the Financial Instruments and Exchange Act (FIEA) distinguishes between a public offering (PO) and a private placement (PP) of securities very clearly, irrespective of whether they are domestic or foreign. 4. In 2008, the Financial Services Agency of Japan revised the FIEA as part of its plan to enhance the competitiveness of Japan's financial and capital markets, establishing the legal framework for markets oriented towards professional investors (an offering system for Specified Investors and Specified Financial Instruments Markets stipulated in the FIEA). This provides the legal framework for the establishment of a new securities market, which is different from the general public offering system and has a wider range of investors than the US Rule 144A market. That is the TOKYO PRO-BOND Market.	
Republic of Korea	Korean Law	Korean Law
	The "Regulation on Securities Issuance and Disclosure" (RSID), enacted in February 2009, is a Financial Services Commission (FSC) regulation that overhauled the former "Regulation on the Issuance and Disclosure of the Securities" by adding regulatory improvements and additional authorities entrusted by the Financial Investment and Capital Markets Act. To ensure the fairness of securities issuance and investor protection, RSID specifically defines items which investors should be notified of in the form of descriptions on the registration statement and investment prospectus, along with the forms and other documents they should accompany. In particular, when it comes to the registration statements of collective investment securities and asset-backed securities, and the registration statement on mergers, business transfers and split-offs, split-and-mergers, comprehensive exchanges or transfer of stocks, RSID defines different specifics and required documents.	

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Table 2. continuation

Jurisdiction	Governing Law for the Resident Issuer	Governing Law for the Non-Resident Issuer • Non-Resident Issuance of Domestic Bond/Medium-Term Note
	Laws and Regulations Related to the Bond Market	
Malaysia	Malaysian law	Malaysian law, (UK (English) law, US (NY) law) • Local MTN programs: Yes. Transparent requirements have been clearly set out in the guidelines issued by the Securities Commission (SC) Malaysia. • International MTN programs: Yes. Full issuing market access on use of international MTN programs is allowed for issuers rated BBB (international rating scale) and above. Transparent requirements have been clearly set out by Bank Negara Malaysia (BNM) and the SC, and such information is made available in the public domain.
	Specific laws governing different types of bonds are summarized as follows: **1. Government bonds** The Malaysian "Code of Conduct for Principals and Brokers in the Wholesale Money and Foreign Exchange Markets," issued by BNM, sets out best market practices, principles and standards to be observed in the Malaysian market. The objective is to uphold market integrity and promote the highest level of professionalism. In addition, BNM also issues rules and guidelines governing the issuance, allotment, interest payment, redemption and settlement of scripless securities under the Fully Automated System for Issuing/Tendering and the Real-Time Electronic Transfer of Funds and Securities System. The aim of these guidelines is to provide a uniform set of rules to promote operational efficiency, market integrity and market transparency. **2. Corporate Bonds - Regulation of the Corporate Debt Securities and *Sukuk* Market** The Capital Markets and Services Act 2007, which is administered by the SC, governs all of the corporate bond and *Sukuk* market. The SC also issues guidelines on the issuance of corporate debt securities and corporate *Sukuk*, supervises trading activities in the secondary market, and conducts joint examinations and inspections of investment banks together with BNM.	
Philippines	Philippine law	Philippine law, (UK (English) law, US (NY) law) • Local MTN programs: Yes. • International MTN programs: Yes. Non-discriminatory basis, no restrictions for both resident and non-resident issuers.
	The issuance of bonds in the Philippines is governed by the Securities Regulation Code (SRC), the implementation of which is under the Securities and Exchange Commission (SEC). **All publicly-offered securities must be registered with the SEC.** Exemptions are granted, among others, for securities issued by the government, Bangko Sentral ng Pilipinas (BSP), local government units, banks except their own shares and any foreign government that has diplomatic relations with the Philippines. Exemptions are also granted for securities issued only to primary institutional lenders or qualified buyers as defined in the SRC sections 9 and 10, and the SRC Implementing Rules and Regulations. A credit rating is required to issue corporate bonds and commercial paper. **Foreign-denominated debt instruments must be registered with BSP.** **Government Securities:** Several statutes or laws govern bond issuance for the Philippine National Government.	
Singapore	Singapore law	Singapore law, UK (English) law, US (NY) law • Local MTN programs: Yes. • International MTN programs: Yes. Restrictions on issuance by non-residents: No. But, Requirements for debentures issuance program set out in Securities and Futures Act (FSA) section 240A. Several Acts of Parliament provide the legal framework for the Singapore securities market: **1. *Companies Act* (Cap 50)** All companies in Singapore are governed by the Singapore Companies Act (Cap 50 of the 1994 Revised Edition of the Singapore Statutes). The act (i) provides for the formation (and ultimately termination) of companies; (ii) confers on companies some special features; regulates the relationships between participants in companies and facilitates dealings between companies and outsiders. The Companies Act regulates the ability to issue, and form of, shares and bonds.

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Table 2. continuation

Jurisdiction	Governing Law for the Resident Issuer	Governing Law for the Non-Resident Issuer • Non-Resident Issuance of Domestic Bond/Medium-Term Note
	Laws and Regulations Related to the Bond Market	
	2. SFA 2001 (Cap 289) The SFA (A42/2001) was first passed by Parliament on 5 October 2001. Since then, it has been coming into force in parts. Part I (Preliminary), Part VIII (Securities Industry Council and Take-over Offers), Part IX (Supervision and Investigation), Part X (Assistance to Foreign Regulatory Authorities), and Part XV (Miscellaneous, except sections 314 and 342[1] and [3]) came into effect on 1 January 2002. The Monetary Authority of Singapore (MAS) announced on 23 May 2002 that Part XIII of the SFA would come into force on 1 July 2002. Part XIII of the SFA deals with offers of shares, debentures and collective investment schemes. In tandem with the announcement of the enforcement date of Part XIII of the SFA, the MAS has also issued new regulations to supplement Part XIII, of which the main regulations are: i. the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2002 (Shares and Debentures Regulations); and ii. the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2002 (Collective Investment Schemes Regulations). These regulations also came into force on 1 July 2002.	
Thailand	Thai law	Thai law • Local MTN programs: Yes. Shelf filing. • International MTN programs: No. MOF is considering this issue. Applying the international MTN program may work against the Ministry of Finance's (MOF) objectives of balancing the financial system. Furthermore, in instances where domestic liquidity is tight, it may raise the cost of raising funds in the domestic market. • Restrictions on issuance by non-residents: Thailand has opened up the domestic market for non-resident Issuers; however, approval remains subject to MOF and Bank of Thailand's (BOT) consideration (use of proceeds, credit rating, and overall financial system liquidity). The Thai Securities and Exchange Commission (SEC) has adopted the ASEAN standard, which means a Singaporean firm may submit the filing document used in Singapore to the Thai SEC, for bond issuance in Thailand.
	Governing Laws of Bond issuance, Self-Governing Rules, Related Legal and Regulatory issues behind the Market: - *SEC Act B.E.2535* and its regulations - *BOT Act B.E.2485* - Ministry of Finance – Public Debt Management Office As stated above, SEC Act and SEC notifications govern the issuance of corporate bonds. Government bonds and state-enterprise bonds are issued under the Public Debt Management Act. BOT bonds are issued under BOT regulations.	
Viet Nam	Vietnamese law (*Securities Law, Enterprise Law,* etc.)	Vietnamese law • Local MTN programs: No. • International MTN programs: No. • Restrictions on issuance by non-residents: Yes.
	Regulations related to government bonds/corporate bonds: **1. Government bonds:** a. *Circular No. 29/2004/TT-BTC* dated 6 April 2004 provides guidelines on the issuance, underwriting and issuance agency for government bonds, government-guaranteed bonds and municipal bonds. b. *Circular No. 21/2004/TT-BTC* issued by the Ministry of Finance (MOF) provides guidelines on tenders of government bonds, government-guaranteed bonds and municipal bonds via the centralized securities trading market. c. *Circular 75-2004-TT-BTC* dated 23 July 2004 provides guidelines for issuance of bonds to the public. d. *Circular No. 132/2010/TT-BTC*, dated 7 September 2010 and issued by MOF, provides guidelines for amendment and supplement to Decision N. 46/2006/QD-BTC. e. *Decree 01/2011/ND-CP* regulates the issuance of government bonds, government-guaranteed bonds and municipal bonds. It took effect on 20 February 2011, and is expected to boost the development of Viet Nam's bond market. f. *Regulation No. 46/2008/QD-BTC* dated 1 July 2008 and issued by the MOF to provide rules for government bond trading management at the Hanoi Securities Trading Center (HaSTC, former name of HNX). g. *Circular No. 19/2004/TT-BTC* dated 18 March 2004 and issued by the MOF to provide guidelines for T-bill and foreign currency bond auctions via the State Bank of Vietnam (SBV). h. *Regulation No. 935/2004/QD-NHNN* dated 23 July 2004 and issued by the SBV to provide guidelines for T-bill and foreign currency bonds auctions via SBV. Decree 01, which was released to replace Decree 141, will be the legal basis for standardizing activities in the primary government bond market. Generally speaking, Decree 01 contains new measures on the formation of a professional and effective bond market in accordance with standard international practices. This new decree makes important changes such as linking government bonds issuance	

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Table 2. continuation

Jurisdiction	Governing Law for the Resident Issuer Laws and Regulations Related to the Bond Market	Governing Law for the Non-Resident Issuer • Non-Resident Issuance of Domestic Bond/Medium-Term Note Laws and Regulations Related to the Bond Market
	activity with public debt management under the new Law on Public Debt Management, effective 2011. The decree also unifies both foreign and local government bond issuance in a single decree instead of two decrees as previously, namely the Decree 141 and Decree 53/2009/ND-CP regarding the issuance of international bonds. In addition, the decree allows government bond issuance to be used to restructure debts and debt portfolios, as well as allowing bond swapping and buying back of bonds before the due date. This is an important step as it paves the way to restructuring the currently small and fragmented bond market. Another positive aspect of the Decree 01 is that it requires the MOF to gradually set up a market-maker system to raise bond market liquidity. Membership conditions have been prescribed by the MOF and are outlined in the decree. Participants in bidding and bond underwriting practices specified in the decree will be considered and recognized as system members provided they satisfy these conditions. The new decree provides clearer and stricter regulations regarding bond issuance and buying, and this will allow for more effective control of capital usage for government bonds. While Decree 141 restricted the use of capital from bond issuance to offset the budget deficit in the annual estimation approved by the National Assembly, Decree 01 allows government bond issuance not only to compensate the temporary deficit budget and to be used as budget expenditure for developing investment, but also to restructure government debts by lending to other organizations, as well as to ensure national financial security. As such, it will help issuers to use the government bond capital more flexibly and effectively and create conditions favorable to maintain continuous and regular issuance to help develop the market. **2. Corporate bonds:** a. *Securities Law 2006 No. 70/2006/QH11* is the highest regulatory document governing the listed and public corporate bond issuance and trading. This law stipulates that an issuer wishing to make a public offering of bond must prepare certain documents and follow disclosure requirements, prior to a formal approval by the State Securities Commission. It stipulates the issuer's responsibilities to maintain healthy financial conditions and to meet its financial obligations to bondholders. This law clearly mentions disclosure rules and practices for issuers. b. *Enterprise Law 2005 No. 60/2005/QH11* paves the path for debt issuance for a shareholding firm by stating that they have rights to issue corporate bonds, convertible bonds and other types of bonds. The law prohibits enterprises from issuing bonds when they do not exhibit a sound financial position, having signals of either low debt servicing capability or below-average profitability. For example, a company is not allowed to issue bonds if: a) It fails to make full repayment for the principal and interest of issued bonds or did not pay or make full payment of due debts in the last 3 consecutive years; b) The average after-tax-profit rate in the last 3 consecutive years is not higher than the interest proposed to pay for bonds to be issued. c. Law amending and supplementing a number of articles of *Securities Law No. 62/2010/QH12* dated 24 November 2010; d. *Circular No. 17/2007/TT-BTC* dated 13 March 2007 detailing initial offering (corporate bond included); e. *Decision 07/2008/QD-NHNN* by the State Bank of Viet Nam governs particular credit institutions operating in Viet Nam, including state-run and joint-stock commercial banks, foreign bank branches, and 100% foreign-owned and joint-venture banks. f. *Decree 90/2011/ND-CP* dated 14 October 2011 and issued by the government to regulate the issuance of corporate bonds; Decree 90 replaced. g. *Decree 52/2006/ND-CP* dated 19 May 2006 regulating the issuance of corporate bonds, and replaced the concept of the issuance of corporate bond to the international market which was stipulated in Decree 53/2009/ND-CP regulating the issuance of international bonds.	

Source: ADB Consultants, based on research materials and market visit information.

III. Competent Authority (Regulator) and Self-Regulatory Organizations of Domestic Bond Markets

Table 3. Competent Authority (Regulator) and Self-Regulatory Organizations of Domestic Bond Markets

Jurisdiction	Main Market Authority	Related Market Authorities	Self-Regulatory Organizations
People's Republic of China	• **Inter-bank Bond Market (OTC):** People's Bank of China (PBOC) • **Exchange Market (Shanghai Stock Exchange and Shenzhen Stock Exchange):** China Securities Regulatory Commission (CSRC) • **Foreign Currency Policy:** PBOC, State Administration of Foreign Exchange	• **Treasury Bonds:** The State Council, Ministry of Finance, PBOC • **Financial Bonds:** PBOC, China Banking Regulatory Commission • **Commercial paper (CP), short-term CP and medium-term notes:** PBOC • **Listed Corporate Bonds:** CSRC • **Enterprise Bonds, State-Owned Enterprise Bonds:** National Development and Reform Commission	National Association of Financial Market Institutional Investors

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Table 3 continuation

Jurisdiction	Main Market Authority	Related Market Authorities	Self-Regulatory Organizations
Hong Kong, China	Hong Kong Monetary Authority	Securities and Futures Commission	--
Indonesia	Capital Market and Non-Bank Financial Service Supervisory Agency	Bank Indonesia	Indonesia Stock Exchange, Indonesia Clearing and Guarantee Corporation, Indonesian Central Securities Depository
Japan	Financial Services Agency		Tokyo Stock Exchange, TOKYO AIM, Japan Securities Dealers Association
Republic of Korea	Financial Services Commission, Financial Supervisory Service	Bank of Korea	Korea Exchange, Korea Financial Investment Association
Malaysia	Securities Commission Malaysia	Bank Negara Malaysia	Bursa Malaysia, ACI Malaysia
Philippines	Securities and Exchange Commission	Bangko Sentral ng Pilipinas	Philippine Dealing and Exchange
Singapore	Monetary Authority of Singapore		Singapore Exchange
Thailand	Ministry of Finance, Securities and Exchange Commission	Bank of Thailand	Thai Bond Market Association
Viet Nam	State Securities Commission	State Bank of Vietnam	Vietnam Bond Market Association

Source: ADB Consultants, based on research materials and market visit information.

IV. Role of the Self-Regulatory Organizations in Domestic Bond Markets

Table 4. Role of Self-Regulatory Organizations in Domestic Bond Markets

Jurisdiction	Self-Regulatory Organizations (SROs)	Role of the SROs
People's Republic of China	National Association of Financial Market Institutional Investors (Inter-bank Bond Market)	• **Self-Governing Rules and Standardization of Management of the Market** In 2007, the NAFMII was officially established. NAFMII is mainly responsible for the self-regulatory management of the over-the-counter (OTC) market (Inter-bank Bond Market). The practice in most recent years proves that NAFMII plays an important role in facilitating market expansion, in guiding and regulating the primary market and the secondary market. **1. Self-regulatory Management System for the Secondary Market** The self-regulatory management system for the secondary market was formulated, which standardized trading activities in the OTC market. **a. Risk Management of Financial Derivatives Transactions** To promote innovations and standardized development of bond derivatives, "the Guidelines on Internal Risk Management of Financial Derivatives Transactions in the Inter-bank Bond Market," and "Guidelines on Credit Risk Mitigation Tools Pilot Business Projects" were promulgated in this regard. "The Master Agreement on Trading Financial Derivative Instruments in the Inter-bank Market of China" by NAFMII (also known as NAFMII Master Agreement) was published and popularized, which addressed a unified and standard text for the OTC financial derivatives market in China. **b. Working Guidelines for Market Makers and Code of Conduct for Trading** A set of self-regulatory normative documents like "Working Guidelines for Market Makers of the Inter-bank Bond Market," "Self-Regulatory Rules and Code of Conduct for Personnel relating to Trading"

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Table 4. continuation

Jurisdiction	Self-Regulatory Organizations (SROs)	Role of the SROs
		were formulated to strengthen self-regulatory management of bond trading behavior of member institutions, regulate the behavior of related traders, maintain the legitimate competitive order of the market, and promote the sound and standardized development of the market. **2. Non-Financial Enterprises Instruments Market Management** Debt financing instruments of non-financial enterprises saw a rapid expansion and market management has become increasingly standardized. In 2010, debt financing instruments of non-financial enterprises registered and issued in local currency reached RMB1.3 trillion, accounting for 76% of the total amount raised by non-financial enterprise through the bond market during the whole year, according to NAFMII. A series of rules and guidelines regarding issuance and underwriting, information disclosure, credit rating, and market transaction of debt financing instrument were established in succession. Subsequently, full-process supervision and inspection, subsequent management and emergency management, and emergency response mechanism for registration and issuance were correspondingly established and improved. Risk inspection and pressure tests on issued debt financing instruments were regularly conducted, as well as dynamic monitoring on subsequent information disclosure and implementation of commitments after bond issuance. Site inspections to the issuer were also carried out in different levels to prevent market risk substantially. • **Promoting Investors Protection Mechanism** NAFMII is vigorously promoting an investors protection mechanism in the non-financial enterprise debt capital market and formulated self-regulatory normative documents such as "Rules for Meetings of Non-financial Enterprise Debt Holders in the Inter-bank Bond Market." Up until now, the Inter-bank Bond Market has already established a primitive bondholder rights protection system. In 2010, NAFMII formulated the "Rules for the Meetings of the Holders of Debt Financing Instruments of Non-financial Enterprises in the Inter-bank Bond Market," stipulating that when the issuer (1) fails to pay in full amount of principal or interest, (2) transfers all or part of the repayment obligation, (3) changes the credit enhancing arrangement or credit enhancement agencies, or (4) undertakes capital reduction, merger, division, dissolution, bankruptcy or receivership and other significant cases, a bond holders' meeting may be convened to protect the legitimate rights and interests of bondholders. • **Further Deregulation for Issuance of Bonds and Notes in the Inter-bank Bond Market** Simplified Qualification of Issuers The qualification of issuers is simplified and the interest can be flexibly determined between issuers and underwriters. The NAFMII enacts market rules on the issuance procedure for short-term financing bill (CP) and the Chinese MTNs, as well as general rules for registration, prospectus and disclosure in the Inter-bank Bond Market based on the Securities Law. In particular, the enactment of the general rule realizes the standardization of bond issuance in the Inter-bank Bond Market and consequently contributes to improving the process of bonds issuance.
Hong Kong, China	–	There are no SROs in the Hong Kong bond market.
Indonesia	Indonesia Stock Exchange (IDX), Indonesia Clearing and Guarantee Corporation (KPEI), Indonesian Central Securities Depository (KSEI)	Each regulates its own areas of operations, subject to Bapepam-LK approval. A number of market associations exist, but none has an SRO status. **1. IDX** IDX was formed as a result of the merger between the Jakarta Stock Exchange and Surabaya Stock Exchange on 30 November 2007. IDX is regulated by the Bapepam-LK and the Ministry of Finance. All stock exchange regulations are issued by the Bapepam-LK based on Ministry of Finance decrees. IDX facilitates and regulates the Exchange—discusses, prepares, acquires approval from Bapepam-LK, issues and changes Listing Regulations, Trading Regulations and Membership Regulations. It develops a mechanism for organizing and monitoring the Exchange,implements Good Corporate Governance practice based on the IDX Corporate Governance Principles, and develops infrastructure and technologies projects with other SROs. In order to produce professional human resources that can encourage capital market growth in Indonesia, together with other SROs, IDX formed the Association of Indonesian Capital Market Education (P3MI). In 2010, P3MI, in cooperation with the

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Table 4. continuation

Jurisdiction	Self-Regulatory Organizations (SROs)	Role of the SROs
		University of Indonesia, founded the Indonesia Capital Market Institute (TICMI). TICMI is focusing on giving education and training skills to aspiring underwriters, investment managers and broker/dealers. Self-Governing Rules: *Peraturan Himdasun: Peraturan No.I Keanggotaan Perhimpunan Pedagang Surat Utang Negara. Peraturan Himdasun No.I Keanggotaan Perhimpunan Pedagang Surat Utang Negara. Peraturan Himdasun No.III Pengawasan Perdagangan Surat Utang Negara, Kode Etik Himdasun, dan* Master Repurchase Agreement. **2. Indonesian Central Counterparty (KPEI):** The clearing and guarantee are executed by the KPEI. **3. Indonesian Central Securities Depository (KSEI):** The settlement of transactions is carried out by KSEI. **4. Market Associations:** The Indonesia bond market has market associations, namely: (a) Inter-Dealer Market Association for Government Securities (HIMDASUN, 26 members comprising domestic and foreign banks, and securities companies). HIMDASUN is holding a license as a market operator for government bonds and has self-governing rules, such as membership, trading, surveillance and master repurchase agreement rules. However, the market operator and self-governing rules function of HIMDASUN is currently inactive. (b) The Indonesian Fixed-Income Dealer Association.
Japan	Japan Securities Dealers Association (JSDA), Tokyo Stock Exchange (TSE), TOKYO AIM,	• **JSDA's Self-regulatory Rules and Guidelines for the Bond Market** In light of most of the bond transactions being conducted via OTC in Japan, JSDA, the full-fledged SRO for the securities industry in Japan, has issued a variety of rules and market practices for bond market participants. Some of the oldest of the JSDA's self-regulatory rules were introduced as administrative guidance by the financial authority. As the role of the financial authority and the JSDA became clearly separated, these rules fell under the purview of the JSDA, and today function as self-regulatory rules. **1. Self-Regulatory Rules** JSDA members must comply with these rules. Their coverage ranges from items to be observed in outright transactions (purchase or sale) such as compliance with laws and regulations, maintenance of fairness of transactions, prohibition of extraordinary transactions,a preparation and maintenance of trading records, and reporting of trade turnovers to items to be complied with in special transactions such as repurchase transactions and OTC options transactions (such as requiring contracts, limiting the types of counterparties, etc.). Regarding the rule requiring contracts, JSDA has prepared a model format that has become the de facto standard in Japan. When Association members violate these rules, they are subject to disciplinary action by the Association (if an Association member commits a breach of the rules together with non-Association member (customer), only the Association member is subject to the disciplinary action). Article 16 of JSDA's "Regulations Concerning Publication of Over-the-Counter Trading Reference Prices, etc., of Bonds and Trading Prices" prescribes that Association Members must not affect the acts set forth in each of the following items and any other acts with the aim of compensating for the customer's loss or adding to his/her profit (hereinafter referred to as "Extraordinary Transactions"). i. OTC transactions in same-bond issues in which sales and purchases are effected simultaneously at prices favorable to customers or the third parties, but unfavorable to Association Members (the price differential that corresponds to a proper interest based on a difference in the delivery date and the price differential which corresponds to the differential in delivery terms between the cash bonds and registered bonds are excluded); ii. The act of repurchasing or selling at prices favorable to customers performed in purchasing bonds from or selling bonds to customers, or transactions effected on the basis of prior promises that contracts will be cancelled (Gensaki transactions are excluded); or iii. A transaction to be conducted in collusion with a third party promising in advance on the occasion of selling a bond to a customer or purchasing it from a customer that the customer will be sure to gain profits by selling the bond to, or purchasing it from, the third party. The JSDA takes into account market conditions and the practical reality of transactions in establishing, revising and abolishing rules to achieve fair and smooth transactions in the Japanese market, thereby contributing to the protection of investors.

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Table 4. continuation

Jurisdiction	Self-Regulatory Organizations (SROs)	Role of the SROs
		During the rule-making procedure, a draft of rules is prepared first through deliberations mainly by Association members, then subjected to public comment and other processes, and finally approved by the Association. **2. Guidelines** Guidelines are practical rules that JSDA requests participants in the bond market to comply with (thus recognized as "best practice"). As they are merely practices, those who do not comply with them are not penalized. However, as voluntary compliance with these guidelines by the overall market contributes to smooth and efficient transactions, most market participants observe the guidelines. Consequently, the JSDA collects and considers the opinions of market participants when setting new guidelines or revising or abolishing old ones. Currently, JSDA has published guidelines concerning delivery and settlement practices such as "Deadline for Settlement (Cut-off time)," "Handling of Fails Charges," and "Order Conclusion Practices for Japanese Government Bonds When-Issued Transactions." **3. Others** Besides the above, JSDA issues from time to time notices to Association members in advance regarding standard procedures, etc., such as the standard calculation method of accrued interests to eliminate the necessity of getting individual consensus between related parties regarding the unification of procedures among market participants. • **TSE's Role as an SRO** TSE fulfills a number of duties related to the operation of a securities market. It assesses companies on their suitability as listed companies, requires these companies to comply with disclosure requirements so that investors are able to make informed decisions, and provides a market place for those companies' shares to be traded. Pursuant to the Financial Instruments and Exchange Act (FIEA), TSE has self-regulatory functions to maintain a transparent, equitable and reliable market. The provision of such a market helps support a healthy economy. The TSE has two units in relation to its self-regulatory functions: the Listing Regulation Unit and the Compliance Unit. **1. Listing Regulation Unit** The Listing Regulation Unit is engaged in various activities to ensure the soundness and fairness of the securities market with a focus on issues related to listing. This Unit is comprised of the following two divisions: (i) The Listing Examination Division, which conducts examinations of companies aspiring to list on the TSE to determine each company's listing eligibility. (ii) The Listed Company Compliance Division, which conducts examinations related to information disclosure of companies already listed on the TSE, and determines their eligibility to continue to be listed. **2. Compliance Unit** The Compliance Unit is engaged in various activities to ensure the soundness and fairness of the securities market with a focus on issues related to trading participants. This Unit is comprised of the following two divisions: (i) The Participants Examination and Inspection Division, which conducts activities such as inspections of banks, securities companies, and other trading participants who possess the qualifications necessary to conduct securities trading on the TSE. (ii) The Market Surveillance and Compliance Division, which conducts detailed investigative activities to ensure that transactions, such as insider trading, market manipulation, and other potentially unfair transactions, do not occur to preserve the fairness and trustworthiness of the securities market. **3. Self-Regulation Punishment and Dealing with Offenders** TSE regulation handles any trading participant that violates the law or stock exchange rules in accordance with article 34 of the official trading participant regulations. The "Disciplinary Committee" is an advisory body that, in addition to conducting inquiries, also handles penalty funds, censure, trading suspension, and limiting or canceling trading capabilities, etc.

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Jurisdiction	Self-Regulatory Organizations (SROs)	Role of the SROs
		• **TOKYO AIM's Role as TOKYO PRO-BOND Market SRO** TOKYO PRO-BOND Market rules and regulations are provided by the TOKYO AIM. TOKYO AIM is an SRO for the TOKYO PRO-BOND Market. Among others things, disclosure requirements under the FIEA such as Securities Registration Statements do not apply to the securities listed on the TOKYO PRO-BOND Market. Instead, disclosure requirements stipulated in the rules and regulations of TOKYO AIM, such as the "Specified Securities Information and the Issuer Filing Information", apply as stipulated: In principle, information on listed bonds and on their issuers shall be disclosed pursuant to the TOKYO AIM's "TOKYO PRO-BOND Market Listing Regulations and Enforcement Rules." Also, the listing, initial offering and trading (if any) of the bonds on and in the TOKYO PRO-BOND Market are regulated under TOKYO AIM's "TOKYO PRO-BOND Market Listing Regulations and Enforcement Rules." In addition to these, trading on the OTC market is regulated under the JSDA's "Self-Regulatory Rules and Guidelines for the Bond Market." TOKYO AIM's "TOKYO PRO-BOND Market Listing Regulations and Enforcement Rules" and JSDA's "Self-Regulatory Rules and Guidelines for the Bond Market" have a mutually important and complimentary relationship.
Republic of Korea	Korea Financial Investment Association (KOFIA), Korea Exchange (KRX)	**Self-Regulatory Organizations** **a. KOFIA** KOFIA is an incorporated membership organization established for the purpose of maintaining business order between members, assuring fair trade, protecting investors, and promoting the sound development of financial investment services. Members of the Association are financial investment firms, general administration companies, collective investment scheme assessment companies, bond assessment companies and members under the conditions prescribed by the articles of the Association. KOFIA aims to promote fair business practices among member companies, create a fair business culture in the securities trading market and maximize the function of investor protection. As such, KOFIA undertakes such activities as self-regulation to protect investors and maintain market order among member companies; dispute mediation between members regarding their business activities; registration and management of investment advisers and managers; OTC trading management for non-listed stocks and non-listed and listed bonds; and establishment of dispute mediation rules for industry's self-mediation of conflicts. **b. KRX** KRX is a stock company, which aims to fix and stabilize fair prices in the transactions of securities and exchange-traded derivatives, and facilitate the stability and efficiency of other transactions. It established and operates the stock market, the KOSDAQ Market, and the futures market. Under the Financial Investment Services and Capital Markets Act (FSCMA), the stock market was established for trading of securities, such as debt securities, equity securities, beneficiary securities, investment contract securities, derivative-combined securities and securities depositary receipts. The KOSDAQ Market was established for trading specific securities, designated by FSCMA, such as stocks. The futures market was established by the KRX for trading exchange-traded derivatives. The responsibilities of KRX include the establishment and operation of the stock market—the KOSDAQ Market—and the derivatives market; transactions of securities and exchange-traded derivatives; transaction confirmation; debt acquisition; deduction; confirmation of settlement securities, settlement item, and settlement amount; settlement execution guarantees; follow-up measures on settlement failure and settlement instruction as a result of transactions on the securities market and the derivatives market; report and disclosure of a listed corporation; and self-resolution of disputes arising from transactions in the stock market, the KOSDAQ Market and the derivative market.
Malaysia	Bursa Malaysia and Financial Market Association (ACI) Malaysia	Bursa Malaysia and the Financial Market Association of Malaysia are regarded as representations of SROs in the Malaysian market. **a. Bursa Malaysia (Exchange)** The Securities Commission Malaysia (SC) is the primary regulator. SC relies on Bursa Malaysia to perform extensive regulatory functions that extend beyond their market operations, including regulating members' business conduct. Bursa Malaysia (formerly the Kuala Lumpur Stock Exchange) is now a holding company following demutualization in 2004. It is an SRO that governs its members' conduct and member companies in securities dealings. It is also responsible for marketplace surveillance. Bursa Malaysia, on behalf of SC, supervises and enforces disclosure standards for listed companies.

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Table 4. continuation

Jurisdiction	Self-Regulatory Organizations (SROs)	Role of the SROs
		It adopts a thematic approach to achieve its goals and objectives of ensuring effective market regulation. Under the thematic approach in discharging its regulatory role, Bursa Malaysia focuses on certain key themes. These themes are regularly reviewed to ensure relevance in a progressive environment. The six themes are as follows. 1. Enhancing standards of corporate governance among listed issuers 2. Improving standards of disclosure 3. Promoting high standards of business conduct and self-regulation among brokers 4. Enhancing the effectiveness of enforcement 5. Elevating the level of education and awareness in the industry 6. Managing the crisis in light of the global financial turmoil **b. Financial Market Association of Malaysia (ACI Malaysia):** ACI Malaysia was established in 1974 to monitor, develop and improve industry standards, and to bring them in line with international best practice. ACI Malaysia, whose membership comprises staff from treasury operations of Malaysia's financial institutions (including insurance companies), adopted a code of conduct for the industry. To qualify as a member of ACI Malaysia, a rigorous qualifying examination must be passed. ACI Malaysia's key objectives are to: • Provide an association for all those who are actively engaged in the financial markets; • Constantly review the techniques and practices of and in the financial markets so as to develop, improve and maintain high standards as comparable to international practices and techniques; a. Promote and develop any scheme which may elevate the status and/or advance the interests of the Association; b. Afford opportunities for social and friendly contact amongst members; c. Establish liaison with associations or bodies in overseas countries having similar objects and to seek their assistance to participate in any seminar forum conference meeting or gathering organized by the association overseas; d. Organize talks, seminars conferences meetings and similar gatherings for Members and for the public to improve and update their knowledge of the financial markets; e. Educate, train and assess by examination or otherwise the members of the Association skilled financial markets, to award any certificate to those who successfully complete the examinations and to award prizes to outstanding candidates in examinations; and f. Establish and maintain libraries and collection of publications, research papers, papers delivered at seminars and conferences and other documents and effects whether the same are in written form or otherwise.
Philippines	Philippine Dealing and Exchange (PDEx)	The Securities and Exchange Commission granted PDEx the license to act as an SRO for the Inter-Dealer, Inter-Professional and Public Markets. As an SRO, PDEx adopted the PDEx Rules that governs all transactions dealt on the PDEx Trading Platform for fixed-income securities.
Singapore	Singapore Exchange (SGX)	SGX serves as a frontline regulator for the markets and clearing houses that it operates in Singapore. It works closely with the relevant regulatory authorities, including the Monetary Authority of Singapore and the Criminal Affairs Department, to develop and enforce rules and regulations to build an enduring marketplace. Being a listed exchange and frontline regulator, SGX is considered an SRO. SGX bears commercial responsibilities in addition to its regulatory duties. While this dual role may present conflicts, it has established a framework to manage such conflicts. It undertakes various regulatory functions to promote a fair, orderly and transparent marketplace as well as a safe and efficient clearing system. These functions are handled by the following regulatory departments: Issuer Regulation, Catalist Regulation, Member Supervision, Market Surveillance, Enforcement, Risk Management, Clearing Risk, Regulatory Development and Policy.
Thailand	Thai Bond Market Association (ThaiBMA)	**1. ThaiBMA Members** ThaiBMA is a self-regulated organization licensed to run an efficient market and act as an information center for Thailand's secondary bond market. It is responsible for developing the market, establishing market conventions and standards, and acting as a bond pricing agency. It also provides a forum for market professionals to move toward a more mature and sophisticated Thai bond market.

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Table 4. continuation

Jurisdiction	Self-Regulatory Organizations (SROs)	Role of the SROs
		a. ThaiBMA Members Membership of ThaiBMA can be classified into three types, each of which is subject to different membership fees and requirements: (1) Ordinary member is a financial institution that has a debt trading license (dealer). (2) Extraordinary member is a company that has an inter-dealer broker license. (3) Associate member is a dealer that has a monthly average trading value in the past year of less than THB100 million per month. In June 2007, membership of ThaiBMA consisted of 52 commercial banks and securities companies. **b. Roles and Functions of ThaiBMA as an SRO** ThaiBMA oversees and monitors the conduct of its members to ensure fairness and efficiency in debt securities trading. It is committed to retaining the confidence of its membership, regulators and investors. Parts of its SRO functions include the following: 1. Perform market monitoring and surveillance to ensure that all trading activities comply with relevant laws and regulation and act as the front line to detect any unfair trading practices. 2. Establish the Ethics and Code of Conduct for members and traders. 3. Issue rules and guidelines regarding debt securities trading and good market practice. 4. Oversee for bond trader examination and registration and provide them with ongoing education to enhance their professionalism. 5. Determine enforcement procedures to penalize those who do not comply with the regulation. There is a Memorandum of Understanding (MOU) between the Securities and Exchange Commission (SEC) and ThaiBMA on Bond Market Supervisory Cooperation to enhance bond market best practices and ensure that registered traders have adequate knowledge in relevant rules, regulations and ethics, as well as knowledge in the bond market. The MOU became effective on 16 November 2005. The SEC Regulation requires that all securities companies appoint a trader registered with the ThaiBMA for bond trading. **Exchanges are regarded as SROs in Thailand.**
Viet Nam	Vietnam Bond Market Association (VBMA)	**VBMA** VBMA is regarded as Viet Nam's bond market self-governing organization. It is a non-profit organization aimed at promoting the professional and effective development of the Viet Nam bond market, guaranteeing the legitimate rights and interests of members and, at the same time, ensuring national interests. **1. VBMA's Roles and Functions** a. Standardize trading practices and market conventions for bonds and other debt instruments of similar nature in the Vietnamese bond market; b. Enhance regional and international integration of the bond market in general and of the members in particular by encouraging the adoption of global best practices by market participants under the conditions of the Vietnamese bond market; c. Establish the code of conduct and ethics to govern the relationship of market participants to ensure equality; d. Improve market expertise and skills by conducting activities to aggregate and analyze bond information, consulting, training and provision of facilitating services to members and other related participants in trading bonds and other debt instruments of similar nature in the Vietnamese bond market; e. Serve as a forum and bridge for exchanging and updating bond information, for strengthening collaboration and mutual understanding among its members, and between its members and Vietnamese regulatory authorities, as well as the related international organizations; comment on related policies; support state competent bodies in improving policies and legal framework for the bond market in Viet Nam; and f. Update, aggregate, store and build a database on bond market information, thus helping to increase the transparency of the Vietnamese Bond Market. **2. History of VBMA** In the recent years, the government has been conducting a reform of Viet Nam's financial market. Besides the state's actions, many organizations, businesses as well as the bond market participants have made great efforts to develop the bond market. In November 2006, a group of local and international commercial banks, securities companies, fund management companies,

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Table 4. continuation

Jurisdiction	Self-Regulatory Organizations (SROs)	Role of the SROs
		and insurance companies formed the Vietnam Bond Market Forum (VNBF) that was intended to promote bond trading through disseminating and sharing market information, and standardizing commercial activities in the bond market in Viet Nam. The VNBF was directed by an executive board voted for by representatives of the members that were active in the Vietnamese Bond Market. Its executive board worked on a part-time basis, met monthly to discuss on and consent to the VNBF's plan of activities and allocation of work. Over a period of 3 years, VNBF's activities brought initial results for market development. However, operating as a forum had its own limitations such as matters concerning legal status, fundraising, and public recognition. In March 2007, VNBF members collaborated and decided to start procedures to apply for an official permit for the establishment of a professional association in compliance with the laws of Viet Nam, thus helped raise its legal status and financial capacity aimed to strengthen activities to effectively and practically contribute to the development of the bond market in general and bring about benefits to the members in particular. The association was named the Vietnam Bond Market Association (VBMA). At that time, VNBF had a total of more than 50 members and planned to increase the number to 100 or more when it becomes an association. Viet Nam's authorities such as the State Securities Commission, the Ministry of Finance, and the State Bank of Vietnam were all in favor of the transformation from a forum to an association. VNBF officially established its office in May 2007, with an executive board secretary working full-time and is responsible for the operations of the office. The draft charter was first completed in June 2008. In August 2008, the Ministry of Finance (MOF) approved the list of the Preparation Committee for establishing the VBMA. On 22 May 2009 the Minister of Interior issued an official decision allowing the establishment of the VBMA. On 31 December 2009, based on the submission letter of the Association's Chairman, the Minister of Interior decided to approve VBMA's Charter, thus legally enabling the Association to set up its management and execution bodies aimed to execute and coordinate VBMA's activities. The Executive Committee, Standing Committee, VBMA Office commenced operations in early 2010 and have stabilized operations step by step. At the end of November 2010, VBMA had 59 members, with 54 institutional members being local and foreign commercial banks, companies in finance, leasing, securities, fund management, insurance and law consultancy, and five individual members. **3. Code of Conduct** The Code of Conduct (COC) is intended to be observed by VBMA member organizations, which engage in bond trading activities, whether as part of their market-making or proprietary trading, and/or brokerage services for bond transactions. Its main aim is to set out the principles and standards which VBMA members should follow when conducting bond trading business in a manner that exhibits a high degree of professionalism, integrity, and fairness. Based on the proposal made by the VBMA, the Ministry of Finance officially authorized VBMA to release the COC. To confirm their commitment, 21 full and associate members affixed their signatures to the MOU for adherence to the COC and agreement to supply information to VBMA's website. The signing was done in the presence of representatives from the MOF, State Securities Commission, Hanoi Stock Exchange, the Vietnam Securities Depository, international agencies, and local television. Other members were to sign the MOU in due course as they were not able to attend the MOU signing or they still needed the opinion of their respective legal departments as a procedure before signing.

[a] Extraordinary Transactions are defined under article 16 of JSDA's Regulations Concerning Publication of Over-the-Counter Trading Reference Prices, etc., of Bonds and Trading Prices. It prescribes that "Association Members must not affect the acts set forth" in the items enumerated in the regulation "and any other acts with the aim of compensating for the customer's loss or adding to his/her."

Source: ADB Consultants, based on research materials and market visit information.

V. Definition of Securities (Bonds)

Table 5. Definition of Securities (Bonds)

Jurisdiction	**Definition of Securities** (Bonds)
People's Republic of China (PRC)	There is no original definition of securities. The definition of securities is not confined to a single law. Securities concepts may differ by industry or competent authority in PRC. Recent securities law defines stocks and standard bonds; however, some bonds do not fall under the Securities Law. The Corporation Law and Enterprise Law co-exist and, hence, may either set the rules for issuance of securities, depending on industry, issuer, and type of security. The official definition of securities given in the revised Securities Law of PRC in 2005 is: The present Law shall be applied to the issuance and transaction of stocks, corporate bonds as well as any other securities as lawfully recognized by the State Council within the territory of the People's Republic of China. In case where there is no such provision in the present Law, the provisions of the Corporation Law of the People's Republic of China and other relevant laws and administrative regulations shall be applied. Any listed trading of government bonds and share of securities investment funds shall be governed by the present Law. Where there is any special provision in any other law or administrative regulation, the special provision shall prevail. The measures for the administration of issuance and transaction of securities derivatives shall be prescribed by the State Council according to the principles of the present Law.
Hong Kong, China	For bonds to be listed on the Hong Kong Stock Exchange or cleared through the Central Moneymarkets Unit (CMU), they must satisfy the criteria set out in, among others, the Listing Rules and the CMU Service Reference Manual (which is accessible to CMU members only), respectively. The legal definition of securities is laid down in the Securities and Futures Ordinance (SFO) of the Laws of Hong Kong, and administered by the Securities and Futures Commission. **1. Definition of "CMU Instruments" in the CMU Service Reference Manual** a. CMU Instruments CMU Instruments are money market and capital market instruments which are specified in the CMU Service Reference Manual as capable of being held within the CMU Service. b. CMU Instruments include: • Asset-Backed Securities • Equity Linked Instrument • Fixed Rate Certificate of Deposit • Government Bond • Floating Rate Certificate of Deposit • Bonds • Fixed Rate Notes • Floating Rate Notes • Commercial Papers • Mortgage-backed Securities • Fixed Rate Linked Securities • Floating Rate Linked Securities • Zero Coupon Certificate of Deposit • Zero Coupon Notes • Bills of Exchange other than trade bills • Any other Hong Kong dollar money market and capital market instruments as the [Hong Kong Monetary Authority] may specify from time to time **2. Definition of "securities" in the SFO and the Listing Rules** **a. Section 1 of Part 1 of Schedule 1 to the SFO** "Securities" means - (i) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority; (ii) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes; (iii) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes; (iv) interests in any collective investment scheme; (v) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities; (vi) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as securities in accordance with the terms of the notice; (vii) a structured product that does not come within any of the paragraphs (i) to (vi) but in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized or required to be authorized, under section 105(1) of this Ordinance,

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Table 5. continuation

Jurisdiction	**Definition of Securities** (Bonds)
	But does not include- (1) Shares or debentures of a company that is a private company within the meaning of section 29 of the Companies Ordinance (Cap 32); (2) Any interest in any collective investment scheme that is- (1) a registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485 sub. leg. A); (2) An occupational retirement scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); or (3) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap 41); (3) any interest arising under a general partnership agreement or proposed general partnership agreement unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts (whether or not that person is, or is to become, a party to the agreement or proposed agreement); (4) Any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interest arising under the receipt, certificate or document; (5) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap 19) and any promissory note within the meaning of section 89 of that Ordinance; (6) any debenture that specifically provides that it is not negotiable or transferable (excluding a debenture that is a structured product in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance); (7) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as securities in accordance with the terms of the notice; **b. Section 7 of Part 1 of Schedule 1 to the SFO** References to securities of a corporation In this Ordinance, a reference to securities (however described) as those of a corporation shall, unless the context otherwise requires, be construed as a reference to securities (having the applicable meaning, whether under section 1 of Part 1 of Schedule 1 to this Ordinance or otherwise) which are- (i) issued, made available or granted by the corporation; (ii) proposed to be issued, made available or granted by the corporation; or (iii) proposed to be issued, made available or granted by the corporation when it is incorporated. **c. Listing Rules - Rule 1.01 of Chapter 1 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong under this section before the definition** a. "Debt securities" means debenture or loan stock, debentures, bonds, notes and other securities or instruments acknowledging, evidencing or creating indebtedness, whether secured or unsecured and options, warrants or similar rights to subscribe or purchase any of the foregoing and convertible debt securities. b. "Equity securities" means shares (including preference shares and depositary receipts), convertible equity securities and options, warrants or similar rights to subscribe or purchase shares or convertible equity securities, but excluding interests in a Collective Investment Scheme.
Indonesia	The definition of securities is not confined to a single law. Original relevant definitions found in the Commercial Code left by the Dutch, which remain in force: promissory note (PN), cheque, and bill of exchange. There is no mention of corporate bonds and debt instruments in the Company Law; however, they are often described or covered in the Articles of Association of companies. The clearest definition of securities can be found in the Capital Market Law No. 8 (1995), which states that: "Securities are promissory notes, commercial paper, shares, bonds, evidences of indebtedness, Participation Units of collective investment contracts, futures contracts related to Securities, and all derivatives of Securities." Pursuant to the Elucidation of the Capital Market Law No. 8, "derivatives" refer to rights that are derived from either debt or equity securities, such as options or warrants. An "option" is the right to purchase or sell within a certain time, a specified number of Securities at a specified price. A "warrant" is a security issued by a company giving the holder the right, 6 months or more after the Securities are issued, to subscribe to shares of the company at a specified price. Today, debt instruments can be divided into capital market and money market. The capital market covers bonds while the money market covers PN, medium-term notes (MTNs), commercial papers (CPs), Certificate of Central Bank (Sertifikat Bank Indonesia, SBI); most instruments have been introduced by foreign bank participants over recent years. MTN and CP are synonymous for all intents and purposes. Legal treatises exist but there is no statutory definition of these instruments. Commercial bills exist, under the freedom of contract provisions used by non-bank issuers; for bank issues, relevant banking provisions apply.

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Table 5. continuation

Jurisdiction	Definition of Securities (Bonds)
Japan	**1. The *Companies Act* defines corporate bonds.** **2. Existence of uniform legal framework for all types of securities** (i) *Law Concerning Book-Entry Transfer of Corporate Bonds, Stocks, and Other Securities* provides the legal basis for the book-entry transfer system and dematerialization of all securities. (ii) The Japan Securities Depository Center (JASDEC) plays the role of the Central Securities Depository (CSD) in the book-entry transfer system in securities other than government bonds. Under this law, the term CSD means "Designated Depository Institution." The book-entry bond transfer system participants must observe the rules established by the Depository Institution. **3. Dematerialization or Immobilization vs. Physical securities** (a) As described above, according to this law and the above system for securities to be distributed, complete dematerialization has been achieved. (b) The *Companies Act* allows for physical bond certificates to be issued regardless of the book-entry transfer method. However, in this case, distribution in the market cannot be expected, and cannot also be allowed to be owned in tax-exempt status under the Japanese taxation system.
Republic of Korea	In principle, bonds are defined in the *Financial Investment Services and Capital Market Act* (FSCMA), as "debt securities", including local government bonds, special bonds, corporate bonds, corporate commercial papers, and other similar instruments. Revisions to the *Commercial Act* with regards to corporate bonds (to take effect in 2012) provide a basis for corporate bonds diversity. This should resolve the discrepancy in concept about securities between the *Commercial Act* and the FSCMA. While the former adopts a positive system to define securities, the latter uses a negative system that allows the issue of any new and innovative securities unless prohibited explicitly by law. Under the previous circumstances, there was a lingering controversy whether any new securities permitted under the FSCMA fell under the categories of corporate bonds as defined in the *Commercial Act*. The updated bill adopts a wider definition for corporate bonds, and it creates a legal basis on which diversified securities can be issued. This will put an end to the controversy.
Malaysia	According to the *Capital Markets and Services Act* (CMSA), securities are defined as: (a) debentures, stocks or bonds issued or proposed to be issued by any government; (b) shares in or debentures of, a body corporate or an unincorporated body; or (c) unit trusts or prescribed investments, and include any right, option or interest in respect thereof, but do not include futures contracts. Definition of debentures: "Debenture" includes debenture stock, bonds, notes and any other evidence of indebtedness of a corporation for borrowed monies, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following: (i) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business; (ii) a cheque, banker's draft or any other bill of exchange or a letter of credit; (iii) a banknote, guarantee or an insurance policy; (iv) a statement, passbook or other document showing any balance in a current, deposit or savings account; (v) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; or (vi) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribed by order published in the Gazette.
Philippines	Under section 3 of the Securities Regulation Code, securities are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture, evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes: a. Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities; b. Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription; c. Fractional undivided interests in oil, gas or other mineral rights; d. Derivatives like option and warrants; e. Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments; f. Proprietary or non-proprietary membership certificates incorporations; and g. Other instruments as may in the future be determined by the Securities and Exchange Commission. The Philippine Dealing and Exchange (PDEx) *Rules for the Fixed Income Securities Market*, as amended (PDEX Rules) define a security as fixed-income securities, including government securities.
Singapore	**"Securities" is defined in the Securities and Futures Act (SFA) in section 2(1), section 196A, section 214, and section 239.** Section 2(1) Interpretation: 2. (1) In this Act, unless the context otherwise requires — "securities" means — (i) debentures or stocks issued or proposed to be issued by a government; (ii) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporated; (iii) any right, option or derivative in respect of any such debentures, stocks or shares; (iv) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —

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Table 5. continuation

Jurisdiction	Definition of Securities (Bonds)
	(a) the value or price of any such debentures, stocks or shares; (b) the value or price of any group of any such debentures, stocks or shares; or (c) an index of any such debentures, stocks or shares; (v) any unit in a collective investment scheme; (vi) any unit in a business trust; (vii) any derivative of a unit in a business trust; or (viii) such other product or class of products as the Authority may prescribe, but does not include — (a) futures contracts which are traded on a futures market; (b) bills of exchange; (c) promissory notes; (d) certificates of deposit issued by a bank or finance company whether situated in Singapore or elsewhere; or (e) such other product or class of products as the Authority may prescribe as not being securities; **Section 196A:** Interpretation of this Division 196A. In this Division — "debenture" has the same meaning as in section 2 and, in relation to a business trust, means any debenture issued by the trustee of the business trust in its capacity as trustee of the business trust; "securities" — (a) in relation to a corporation, for the purposes of sections 196 (a) (i) and (b) (i), 198, 202 and 203, means — debentures, stocks or shares issued or proposed to be issued by a corporation; any right, option or derivative in respect of any such debentures, stocks or shares; any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in — (i) the value or price of any such debentures, stocks or shares; (ii) the value or price of any group of any such debentures, stocks or shares; or (iii) an index of any such debentures, stocks or shares; or such other product or class of products as the Authority may prescribe, but does not include — (AA) futures contracts; (BB) bills of exchange; **Section 214:** Interpretation of this Division 214. In this Division — "debenture" has the same meaning as in section 2 and, in relation to a business trust, means a debenture issued by the trustee of the business trust in its capacity as trustee of the business trust; **Section 239:** Preliminary provisions 239. (1) In this Division — "debenture" includes debenture stock, bonds, notes and any other debt securities issued by a corporation or any other entity, whether or not constituting a charge on the assets of the issuer but does not include — (d) a cheque, letter of credit, order for the payment of money or bill of exchange; (e) subject to the regulations made under this Act, a promissory note having a face value of not less than USD100,000 and having a maturity period of not more than 12 months; or (f) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word "debenture" does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be; "debenture issuance program" means any scheme or arrangement by an entity for the issue of debentures or units of debentures where only part of the maximum amount or aggregate number of debentures or units of debentures under the program is offered initially and a further tranche or tranches may be offered subsequently;
Thailand	**a. Definition in the *Securities and Exchange Act*:** The *Securities and Exchange Act, B.E. 2535*, section 4 stipulates the definition of securities' as:, (1) Treasury bills; (2) Bonds; (3) Bills; (4) Shares; (5) Debentures; (6) Investment units which are instruments of evidence representing the rights to the property of a mutual fund; (7) Certificates representing the rights to purchase shares; (8) Certificates representing the rights to purchase debentures; (9) Certificates representing the rights to purchase investment units; (10) Any other instruments as specified by the Securities and Exchange Commission (SEC).

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Table 5. continuation

Jurisdiction	Definition of Securities (Bonds)
	"Bill" means any bill issued for raising funds from the public as specified in the notification of the SEC. "Debenture" means any debt instrument or whatever name excluding bills, divided into units, each with equal value and a predetermined rate of return, issued by any company to a lender of purchaser, representing the right of the holder of such instrument to receive money or other benefit. **b. Debentures in the Public Limited Companies Act, B.E. 2535 (1992)** **Chapter XI, Debentures:** Section145. The borrowing by the company by means of the issuance of debentures for offer for sale to the public shall be in accordance with the law on securities and stock exchange, and section 25 shall apply mutatis mutandis. The resolution approving the issuance of debentures under paragraph one shall require the resolution of the meeting of shareholders passed by a vote of not less than three-fourths of the total number of votes of the shareholders attending the meeting and having the right to vote. **Chapter III, Offer of Shares for Sale to the Public:** Section 24. The offer of shares for sale to the public or to any person shall be in accordance with the law on securities and stock exchange. Section 25. The promoters or the company shall submit to the Registrar a copy of the documents relating to the offer of shares for sale to the public which shall be prepared and submitted to authorities under the law on securities and stock exchange, within fifteen days as from the date of submission to such authorities in accordance with the rules, procedures and conditions prescribed by the Registrar.
Viet Nam	*Law on Securities:* Pursuant to article 3 of the amended and supplemented *Securities Law No. 62/2010/QH12* and article 6 of *Securities Law No. 70/2006/QHII*, securities mean evidence from an issuing organization certifying the lawful rights and interest of an owner with respect to an assets or capital portion. Securities may take the form of certificates, book entries or electronic data, and shall comprise the following types: ✓ Shares, bonds and investment fund certificates; ✓ Share purchase rights (rights issue), warrants, call options, put options, future contracts, groups of securities and securities indices; ✓ Investment capital contribution contracts; ✓ Other types of securities stipulated by Ministry of Finance.

Source: ADB Consultants, based on research materials and market visit information.

VI. Event of Default and Payment Default

Table 6. Event of Default and Payment Default

Jurisdiction	Definition and related issues in the event of default and payment default
People's Republic of China (PRC)	In PRC, there is no legal definition of default. Generally speaking, the market works on the basis that bonds approved by all competent authorities have a slim chance of default. This remains untested so far. However, the concept of event of default in market practice is increasingly seen as a case of missed payment. The declaration of default remains at the determination of investors, through bondholder meetings. **1. Constituting an event of default.** As far as recognition of an event of default is concerned, bond issue documentation may not have a definition or sufficient detail. The People's Bank of China has general rules on default in Inter-bank Bond Market instruments, but cover limited security types. A typical definition is as follows: If an issuer cannot pay 90 days after the maturity of the bond, it may constitute an event of default. **2. Timing of default.** However, a necessary distinction may be made on the timing of default, i.e. no payment is made on the payment date (during the 24 hours of payment day, it is constituted as "default"), or no payment during business hours of the payment day (i.e., by market close, it is "accidental default"). Usually, default happens at the end of the day. **3. Payment default in the Exchange market/Inter-bank Bond Market,** (a) Participant default. An event of participant default is either the default in payment of any sum payable to the China Securities Depository and Clearing Corporation (CSDCC) or China Central Depository and Clearing (CCDC), or the default in delivery of securities to the CSDCC or CCDC. (b) Participant-versus-investor default: An event of participant-versus-investor default is either a client default in any of the payment obligations due to the clearing participant (in the case of the Exchange market) or a client default in delivery obligations owed to the clearing participant (in the case of the Exchange market). The clearing participant (in the case of the Exchange market) should recognize and declare an event of default. No case of default of bonds has taken place in the Inter-bank Bond Market yet, and there are no known cases of default for corporate bonds. **4. Covenants or provisions related to default in issue documentation.** A cross-default clause is increasingly being introduced in issue documentation, and an acceleration clause is more likely to be included in issue documentation these days. Banks can offset debts against assets of the same account holder; offset (of liabilities versus assets) is permitted by law. A "pari passu clause" is not used. An issuer is the debtor on a specific issue. This is true in particular for subordinate debt.

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Table 6. continuation

Jurisdiction	Definition and related issues in the event of default and payment default
Hong Kong, China	**1. Terms of Events of Default** a. Events of default are a matter of negotiation but, generally, cover non-payment of principal or interest by the issuer, non-compliance with obligations under the bond instruments, non-payment of other indebtedness of the issuer or guarantor when due; the occurrence of certain specified events, for example, change of control, commencement of proceedings against the issuer, passing of an effective resolution for the winding up, administration or dissolution of the issuer or guarantor. b. Events of default are usually found in the trust deed, fiscal agency agreement or deed of covenant (executed by the issuer and guarantor). **2. Declaration of Default** **a. Fiscal agent structure.** The noteholders may give written notice to the Issuer to declare that the notes would become forthwith due and payable. This direct right is contained in a deed of covenant. **b. Trustee structure.** The trustee may at its discretion give notice of default by: Declaring the notes immediately due and repayable (with a certified opinion that the event is materially prejudicial to the interests of the holders of the Notes); or If so directed in writing by the holders of at least 25% in principal amount of the notes, or by an extraordinary resolution of the holders of the notes, declaring all the notes immediately due and repayable. The trustee may institute proceedings against the issuer to enforce repayment of the principal of the notes with accrued interest, and to enforce the provisions of the trust deed. However, noteholders are not entitled to proceed directly against the issuer unless the trustee fails to do so within a reasonable period and such failure is continuing. The noteholders' interests are represented by the trustee. **c. When the default happens.** The default may happen at any time during the day.
Indonesia	The event of default is a condition where the Issuers can be declared default. Bapepam-LK regulation requires that the procedure to declare default be clearly stated on the Trustee Contract. Pursuant to prevailing Bapepam-LK Regulation, the Trustee Contract shall contain a list of events of default, among others: 1. The issuer does not pay the principal and interest of the debt securities and *Sukuk* on its maturity ; 2. The actual condition about the collateral or the issuer status and its management is different from the information and explanation provided by the Issuer. 3. The issuer has been declared default in relation to credit agreement by one or more of its creditor (cross default). For instance, cross-default is possible, and clauses are used in contracts; grace periods may apply. 4. Suspension of payment (moratorium) of the issuer is declared, and; 5. The issuer does not perform other obligations stated in the trustee contract. Bapepam-LK Rule No. VI.C.4 also requires a Contract of Debt Securities Trustee to contain a clear procedure to solve the event of default or state a default. Usually, when an event of default occurs, the trustee would require the issuer to take corrective action to solve the problem in a specific time period. If the issuer does not take the necessary corrective actions, the trustee may invite all bondholders and conduct a general meeting of bondholders to seek clarification from the issuer regarding the failure. If the meeting does not accept the issuer's explanation and clarification, the meeting may: restructure the debt; or declare default status to the Issuer. set another bondholders meeting to decide whether the default will be noticed or not.
Japan	The *Commercial Code of Japan* stipulates the event of default. In relation to this, under the *New Companies Act* adopted in June 2005 (enforced in May 2006), a commissioned company for bondholders and its liability and power have been expanded.
Republic of Korea	When an event of default occurs to the issuer, which is one of the major details of an entrustment contract based on relevant provisions in the contract, the trustee announces this information to the trust and Bond Information Service (BIS through www.kofiabond.or.kr) operated by the Korea Financial Investment Association, which enables notification to all the investors.
Malaysia	The events of default are usually negotiated terms but the Trust Deed Guidelines issued by the Securities Commission provide for the minimum content requirements for such trust deed. The trust deed and the terms and conditions of debentures must provide for, but should not be limited to, the following: 1. a list of all events, the occurrence of any of which would entitle or oblige the trustee to declare the debentures immediately due and repayable (to the extent appropriate and subject to any materiality thresholds and provision for remedy or period of grace which may be negotiated) including the following: a. where there is any default in payment of any principal, premium or interest or profit under the debentures or *Sukuk*; b. where a winding up order has been made against the issuer; c. where a resolution to wind up the issuer has been passed; d. where a scheme of arrangement under section 176 of the *Companies Act 1965* has been instituted against the issuer; e. where a receiver has been appointed over the whole or a substantial part of the assets of the issuer; f. where there is a breach by the issuer of any term or condition in the debentures or *Sukuk* or provision of the trust deed or of any other document relating to the issue, offer or invitation in respect of the debentures or *Sukuk*;

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Table 6. continuation

Jurisdiction	Definition and related issues in the event of default and payment default
	g. where any other indebtedness of the issuer becomes due and payable prior to its stated maturity or where the security created for any other indebtedness becomes enforceable; h. Where there is a revocation, withholding, invalidation or modification of a license, authorization or approval that impairs or prejudices the issuer's ability to comply with the terms and conditions of the debentures or *Sukuk*, or the provisions of the trust deed or any other document relating to the issue, offer or invitation in respect of the debentures or *Sukuk*. 2. The powers of the trustee in any of the events described in paragraph (i) include: a. the powers of the trustee to declare the debentures or *Sukuk* immediately due and payable at its discretion; b. the powers of the trustee to declare the debentures or *Sukuk* immediately due and payable as directed by a special resolution; c. the powers of the trustee to enforce the provisions of the trust deed; d. the circumstances under which the trustee shall be bound to enforce the provisions of the trust deed; and e. the circumstances under which the holders of the debentures or *Sukuk* are entitled to pursue their rights and remedies.
Philippines	The following descriptions are taken from a sample prospectus of corporate bonds in the Philippines and have been generalized for reference. a. Event of Default: The Issuer shall be considered in default under the Bonds and the Trust Indenture or Trust agreement in case any of the defined events (exhibit the examples of the items, each an "Event of Default") shall occur and is continuing: Non-payment default, Insolvency Default, Cross default, Winding up proceedings, Representation/Warranty Default, Covenant Default, Breach of Obligations Default, Expropriation Default, Judgment Default, Writ and Similar Process Default, Closure Default, Validity Default, Change of Control Default. b. Consequences of Default: If any one or more of the Events of Default shall occur and be continuing after the lapse of the period given to the Issuer within which to cure such Event of Default under the Trust Indenture or Trust Agreement, if any, or upon the occurrence of such Event of Default for which no cure period is provided, (i) the Trustee, upon the written direction of the Majority Bondholders, by notice in writing delivered to the Issuer, or (ii) the Majority Bondholders, by notice in writing delivered to the Issuer and the Trustee, or (iii) the Trustee, in its discretion, in case of a Non-Payment or Insolvency Default, may declare the Issuer in default and declare the principal of the Bonds then outstanding, together with all interest accrued and unpaid thereon and all amounts due thereunder, to be due and payable not later than (for instance) 5 Business Days (the periods provided in the Trust Agreement and in these Terms and Conditions) from the receipt of the declaration of default ("Default Payment Date") with copy to the Paying Agent, who shall then prepare a payment report in accordance with the Registry and Paying Agency Agreement. Thereupon, the Issuer shall pay in accordance with the Registry and Paying Agency Agreement.
Singapore	The events of default are usually negotiated terms in Indenture or Trust deed.
Thailand	Generally, an event of default will be stipulated in the terms and conditions of the debenture. Under Thai law, the terms and conditions are deemed to be an agreement between the debenture issuer and the debenture holder. The following are examples of "events of default" that are normally stipulated in the terms and conditions of a debenture: 1. Non-payment: If the Issuer makes a default in the payment of any principal, premium or interest due in respect of the Bonds. 2. Breach of Other Obligation: If the Issuer does not perform or comply with one or more of its other obligations under the Bonds, the Trust Deed or Terms and Conditions. 3. Insolvency: If the Issuer or any of its group entities becomes insolvent or bankrupt, or is unable to pay its debts, stops, suspends or threatens to stop or suspend payment of all or a material part of its debts, by Court order. 4. Enforcement Proceeding: If a distress, attachment, execution, seizure before judgment or other legal process is levied, enforced or sued out on or against any material part of the property, assets or turnover of the Issuer or any of its group entities and is not discharged or stayed within 60 days. 5. Winding-up: If an order is made or an effective resolution passed for the winding-up or dissolution or administration of the Issuer or any of its group entities. 6. Security Enforced: If an encumbrancer takes possession or an administrative or other receiver or an administrator or other similar officer is appointed of the whole or any substantial part of the property, assets or turnover of the Issuer or any of its group entities and is not discharged within 60 days.

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Table 6. continuation

Jurisdiction	Definition and related issues in the event of default and payment default
	The debenture holder and/or debenture holder representative (Trustee) will normally recognize and declare the default. The declaration of event of default will be made in accordance with the terms and conditions of the debentures. Thai law is silent as to whether the default will happen during the day or at the end of the day. However, in practice, the default will immediately occur when the debenture holder and/or debenture holder representative (Trustee) declares an event of default. The precedent of a default of debentures normally occurs on the grounds that the debenture issuer fails to pay interest and to repay the principal to the debenture holder when due.
Viet Nam	Bond settlement default: Settlement default in domestic bond transactions traded on an exchange has not occurred yet. If a default occurs in securities or cash settlement, the principles and resolution sequence set out in the settlement regulations of the Vietnam Securities Depository apply. In Viet Nam, there has been no precedent of a default of a corporate issuer on interest and principal payments. However, a bondholder is a creditor of the issuer so, if it happens, the *Bankruptcy Law (No. 2112004/QHII)* will be applied, and issuer is required to announce the bankruptcy status.

Source: ADB Consultants, based on research materials and market visit information

VII. Existence of the Meeting of Bondholders System

Table 7. Existence of Bondholders Meeting System

Jurisdiction	Existence of bondholder meeting system	Remarks
People's Republic of China	Yes	The declaration of default remains at the discretion of investors, through bondholder meetings. The National Association of Financial Market Institutional Investors (NAFMII) has formulated a self-regulatory management system for the secondary market and promulgated self-regulatory normative documents such as the "Working Guidelines for Market Makers of the Inter-bank Bond Market," "Self-regulatory Rules for Bond Trading in the Inter-bank Bond Market," and "Rules for the Meetings of the Holders of Debt Financing Instruments of Non-financial Enterprises in the Inter-bank bond Market" to strengthen self-regulatory management of members when carrying out trading activities, to regulate the behavior of related trader, maintain the legitimate competitive order of the market, and promote the sound and standard development of the market. In 2010, NAFMII formulated the "**Rules for the Meetings of the Holders of Debt Financing Instruments of Non-financial Enterprises in the inter-bank Bond Market,"** stipulating that when the issuer (1) fails to pay in full amount of principal or interest, (2) transfers all or part of the repayment obligation, (3) changes the credit enhancing arrangement or credit enhancement agencies, (4) implements capital reduction, merger, division, dissolution, bankruptcy or receivership and other significant cases, a bondholders' meeting may be convened to protect the legitimate rights and interests of bondholders.
Hong Kong, China	Yes	-
Indonesia	Yes	The issuer is responsible for the resolution, based on the general meeting of bondholders' resolution.
Japan	Yes	-
Republic of Korea	Yes	-
Malaysia	Yes	The trustee is responsible for a resolution of a meeting of bondholders. Meetings may be convened at the request of the issuer, trustee or an agreed percentage of debenture holders. There should be a quorum requirement for the transaction of business at the meetings. The quorum for the passing of special resolutions should be explicitly stated in the trust deed.
Philippines	Yes	-
Singapore	Yes	-
Thailand	Yes	-
Viet Nam	No	In Viet Nam, there is no official concept of the meetings of bondholders yet.

Source: ADB Consultants, based on research materials and market visit information.

VIII. The System of Commissioned Company, Bond Representative and Trustee

Table 8. The System of Commissioned Company, Bond Representative and Trustee

Jurisdiction	Name of System	Status The System of Commissioned Company, Bond Representative and Trustee
People's Republic of China	Commissioned company	• Enterprise bonds have this concept; whether it works is untested.
Hong Kong, China	Trustee	• The appointment of a trustee is done under provisions of the Trust Indenture. • The appointment of a trustee is not mandatory. • No recent issues or programs featured trustee.
Indonesia	wali amanat (Trustee)	• Bapepam-LK has guidelines for registration and the duties as Trustee. • Trustees must make a contract, *perwaliamanatan*, with the corporate issuer in accordance with the conditions set out by Bapepam-LK.
Japan	Commissioned person or Commissioned company	• Stipulated in *Companies Act*. • It shall not be applied in case bond minimum unit is JPY100 million or more.
Republic of Korea	Commissioned company (Revised commercial law will take effect in 2012)/ (Old Commercial Act)	• Stipulated in the revised *Commercial Act*. • The appointment of a commissioned company is not mandatory. • The appointment of a commissioned company is done under provisions of the Trust Indenture.
Malaysia	Trustee	• Trust deed and trustee is required; based on *Trustee Corporation Act*. • Trustees should be approved by Securities Commission (SC) and listed on SC website. • AAA issuers may not need trustee, but such issues need to be approved by SC, and default definitions need to be included in bond issue documentation.
Philippines	Trustee - for Public offering. Facility Agent (FA) - for Private Placement	• Public offering bond issues typically have a trustee. • Corporate bond issuers must appoint a trustee. • Private placements require a Facility Agent (FA) that functions as trustee and fiscal agent; in absence of specific regulations, issue documentation would indicate that FA works on behalf of investors.
Singapore	Trustee	• An issuer must appoint a suitable trustee to represent the holders of its debt securities listed on the Exchange. However, a trustee is not required for a debt issue that is offered only to sophisticated or institutional investors and is traded in a minimum board lot size of SGD200,000 or its equivalent in foreign currencies following listing. (Refer to article 308 "Part IV Trustee and Trust Deed" of Chapter 3 (Debt Securities) of the SGX Main Board Listing Rule for detailed information on the suitability of the trustee and the provisions to be included in the trust deed.)
Thailand	Bondholder Representative or Trustee	• No trustee concept for bonds; but bond representative (BR). • BR has fiduciary duty, plus any duty and liability set out in the terms and conditions; both appointment of BR and actual terms and conditions need to be registered with the Securities and Exchange Commission. • Indenture agreements in bond issues can specify a trustee or bondholder representative. This trustee oversees bondholder rights, including the filing of claims and demand payments from the issuer or guarantors. Bondholders can sue and claim for damages from the trustee in case the trustee acts in bad faith or causes damages to bondholders.
Viet Nam	-	• In Viet Nam, there is no official concept of a bondholder representative, commissioned company, or trustee, yet.

Source: ADB Consultants, based on research materials and market visit information.

IX. Bankruptcy Procedures

Table 9. Bankruptcy Procedures

Jurisdiction	Bankruptcy Procedures
People's Republic of China (PRC)	According to article 7(2) of the *Law of the People's Republic of China on Enterprise Bankruptcy* (Enterprise Bankruptcy Law), the creditor shall be entitled to ask the debtor to go into bankruptcy. The *Enterprise Bankruptcy Law* in the PRC is basic, and other relevant additional provisions exist for financial institutions, mainly focused on the debtor-creditor relationship. 1.Bankruptcy provisions: In the PRC, the bankruptcy provisions mainly consist of the Enterprise Bankruptcy Law, *Company Law*, *Securities Law*, *Commercial Bank Law* and other relevant laws and regulations. Among them, the Enterprise Bankruptcy Law is the special law regulating bankruptcy. If an enterprise legal person cannot repay due debts and its assets are insufficient to pay off all the debt or it apparently lacks solvency, it should clean up debt according to the Enterprise Bankruptcy Law. After an enterprise is declared bankrupt in accordance with the Enterprise Bankruptcy Law, its collateral property does not belong to the estate, but constitutes repayment of its secured debt, and the remaining assets are included in the estate. 2.Settlement of the insolvent assets: Settlement of the insolvent assets are effected in the following order: (a) Expenses for bankruptcy proceedings, including: litigation cost involved in a bankruptcy case; expenses for management, realization and distribution of the debtor's assets; and expense involved in the administrator's performance of these duties and paid for his remuneration and expenses for the employees recruited. (b) Community debts, including: debts generated when the bankruptcy custodian or debtor requests the opposite party concerned to perform a contract that is not fulfilled completely by both parties concerned; debts generated from the custodial management of the debtor's assets; debts generated from improper gains; the labor cost for the continuance of business operation, social insurance premiums, as well as other debts as incurred therefrom; debts generated from the damage that occurs during the performance of functions and duties by a bankruptcy custodian or other relevant personnel; and debts generated from any damage due to the debtor's assets. (c) The wages, subsidies for medical treatment and disability and comfort and compensatory funds as owed by a debtor, the fundamental old-age insurance premiums, fundamental medical insurance premiums that shall have been transferred into the employees' personal accounts, as well as the compensation for the employees as prescribed by relevant laws and administrative regulations. (d) The social insurance premiums other than those as prescribed in the aforesaid provisions and tax fees as defaulted by the bankruptcy. (e) The common credits of bankruptcy. Where the insolvent assets are not enough to meet the requirements for liquidation in a same sequence, it shall be distributed in light of the proportion. After the recent financial crisis, and based on lessons learned from the risk of the bankruptcy of large financial institutions, the PRC is developing its "Financial Institution Bankruptcy Management Regulations," aiming to find the resolution to the problem of large financial institutions too big to fail. "The Asia-Pacific Restructuring and Insolvency Guide 2006" explains the restructuring and insolvency frameworks of Asia-Pacific countries.
Hong Kong, China	Any bond issuers going into bankruptcy are subject to the relevant rules set out in the *Bankruptcy Ordinance* (Chapter 6 of the *Laws of Hong Kong*). The ranking of a bond vis-à-vis other indebtedness of the bond issuer is determined taking into account the terms and conditions set out in the prospectus, offer documents, term sheets or similar form of documents, as well as section 38 (Priority of debts) of the *Bankruptcy Ordinance*. The insolvency law in Hong Kong, China is contained in the *Companies Ordinance*, the *Bankruptcy Ordinance* and the *Companies (Winding-up) Rules*. It is based on the law of the United Kingdom (UK), prior to the introduction of the Cork Report. Like the regimes in Australia and New Zealand—also UK-based jurisdictions—it is generally creditor friendly. Out-of-court restructuring, schemes of arrangement, compulsory liquidations, creditors' voluntary liquidations and receiverships are available under the insolvency law. No corporate rescue procedure is currently available.
Indonesia	The Indonesian *Bankruptcy Law* provides the legal infrastructure for bankruptcy, which can be settled either through court proceedings or informal mechanisms. Creditors may file a bankruptcy petition or submit a lawsuit to the relevant district court based on a breach of contract. During the 1997 Asian financial crisis, the government established the following informal mechanisms to facilitate negotiations between debtors and creditors: 1. The Jakarta Initiative Task Force to provide corporate debt restructuring and workout plans to both creditors and debtors. 2. The Indonesian Debt Restructuring Agency to help market-oriented corporations resolve their debt by providing them with fixed exchange rates to strengthen the value of the rupiah. This agency's mandate expired in 2006. 3. The Indonesian Bank Restructuring Agency to facilitate bank and loan restructuring by taking over a bank's non-performing loans and injecting new funds to recapitalize them. Provisions for insolvency are also included in the Capital Market and Financial Institution Supervisory Board (Bapepam-LK) Rulebook.

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Table 9. continuation

Jurisdiction	Bankruptcy Procedures
Japan	There are four statutory insolvency proceedings that apply to Japanese corporations. Each can be categorized into one of two general types, depending on whether the aim of the proceedings is to liquidate the company ("Liquidation-type Proceedings") or rehabilitate the company ("Rehabilitation-type Proceedings"): 1. Liquidation-type Proceeding a. Bankruptcy proceedings (*hasan*) under the *Bankruptcy Act*; and b. Special liquidation proceedings (*tokubetsu seisan*) under the *Companies Act*. 2. Rehabilitation-type Proceedings a. Corporate reorganization proceedings (*kaisha kosei*) under the *Corporate Reorganization Act*; and b. Civil rehabilitation proceedings (*minji saisei*) under the *Civil Rehabilitation Act*. At the time of the filing of the application for or the commencement of any of those insolvency proceedings or both, depending on the language of the default clause of the relevant bonds, the bonds will be accelerated. If a commissioned company for bondholders has been appointed for the bonds, the commissioned company will act for the benefit of the bondholders as creditors of the issuer in the proceedings. If no commissioned company has been appointed, individual bondholders will be expected to act for themselves in the proceedings. As an alternative to commencing one of the four types of statutory insolvency proceedings above, a Japanese corporation in financial distress may seek to negotiate an out-of-court restructuring of the corporation with its creditors. In the course of such negotiation, bondholders' meeting may determine the amendment to the terms and conditions of the bonds, such as installment repayment of principal amount or reduction of the interest rate, though a court approval will be required to have the decision of the meeting take effect. The resolution requirement for an agenda depends on the content of the agenda. This statutory bondholders' meeting system set out in the *Companies Act* is applicable only to the bonds issued by Japanese corporate issuers under Japanese law.
Republic of Korea	*Corporate Restructuring Promotion Act* (authority concerned: Financial Services Commission): The purpose of this Act is to facilitate constant corporate restructuring through market functions by providing for matters required in promoting an expedited and smooth corporate restructuring. *Debtor Rehabilitation and Bankruptcy Act* (authority concerned; Ministry of Justice): The purpose of this Act is to efficiently rehabilitate debtors, who are faced with livelihood collapse due to financial difficulties, and their businesses through the coordination of legal relations among interested persons, including creditors, shareholders and equity holders, etc. and to liquidate the assets of debtors who are deemed to find it difficult to rehabilitate or fairly distribute their assets.
Malaysia	Malaysia's laws on bankruptcy have been established in the *Companies Act 1965, Bankruptcy Act 1967*, and in their respective rules and various amendments. The *Companies Act 1965* contains provisions for insolvency, rehabilitation, appointment of receivers, and winding-up procedures for companies. Specific laws governing industries may also have provisions governing insolvency of a company (e.g., the *Banking and Financial Institutions Act 1989* for banks). The *Bankruptcy Act 1967* covers bankruptcy laws for individuals. "The Asia-Pacific Restructuring and Insolvency Guide 2006" explains the restructuring and insolvency frameworks of Asia-Pacific countries in greater detail.
Philippines	Bankruptcy procedures are governed primarily by the *Financial Rehabilitation and Insolvency Act of 2010 (FRIA)* and the *Civil Code of the Philippines*. The Supreme Court will soon issue the implementing rules of FRIA. FRIA was passed into law on 18 July 2010. The FRIA repealed the country's 101-year old *Insolvency Law* (Act 1956), which was enacted in 1909. FRIA provides for three different modes of rehabilitating an insolvent corporate debtor, namely: (a) court-supervised rehabilitation, (b) pre-negotiated rehabilitation, and (c) out-of-court or informal restructuring or rehabilitation. In a court-supervised rehabilitation proceeding, the court appoints a receiver and determines which claims against the debtor are valid. A rehabilitation plan is to be agreed upon by the debtor and creditors representing more than 50% of the claims of each class of creditors. If the plan is not finalized or approved by the court, the debtor will be liquidated. During the pendency of the proceedings, all claims against the debtor are suspended, and taxes as well as fees due from the debtor to the government are deemed waived. The amount of debt reduced or forgiven will not be subject to tax. In a pre-negotiated rehabilitation, a debtor seeks court approval of a rehabilitation plan previously contracted by it with creditors representing at least 2/3 of its total liabilities (and at least 67% and 75% of its secured and unsecured obligations, respectively). Claims against the debtor are suspended while the proceedings are pending in court. In the out-of-court mode, the debtor and creditors representing at least 85% of the debtor's total liabilities (and at least 67% and 75% of its secured and unsecured obligations, respectively) are to agree on a restructuring or rehabilitation plan. This plan becomes binding on the contracting parties, as well as on the other creditors of the debtors. During negotiations, a standstill of up to 120 days may be approved by creditors holding more than 50% of the total claims. The FRIA does not cover banks, insurance companies and pre-need companies, as these entities are governed by other laws and regulations. FRIA also provides for the liquidation of insolvent juridical debtors. Voluntary Liquidation is initiated by the debtor via a verified petition, or a verified motion in court-supervised or pre-negotiated rehabilitation proceedings. Rehabilitation proceedings may also be converted into liquidation proceedings when the rehabilitation court finds that the debtor is insolvent and there is no substantial likelihood for the debtor to be successfully rehabilitated, or when the

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Table 9. continuation

Jurisdiction	Bankruptcy Procedures
	rehabilitation plan is not confirmed by the rehabilitation court within 1 year from filing of the petition, or when the rehabilitation proceedings is terminated due to failure of rehabilitation or dismissal of the rehabilitation petition for reasons other than technical grounds, or at any time upon the recommendation of the rehabilitation receiver that the rehabilitation of the debtor is not feasible. Involuntary Liquidation is initiated by three or more creditors whose aggregate claims amount to at least PHP1 million or at least 25% of the subscribed capital stock or partners' contribution, whichever is higher, also via a verified petition or a verified motion in a court-supervised or pre-negotiated rehabilitation proceedings. FRIA has a special provision for the liquidation of a securities market participant. It recognizes the power of a regulatory agency or self-regulatory organization to liquidate trade-related claims of clients or customers of a securities market participant which, for purposes of investor protection, are deemed to have absolute priority over all other claims of whatever nature or kind insofar as trade-related assets are concerned. Trade-related assets include cash, securities, trading right, and other assets owned and used by the securities market participant in the ordinary course of its business. For insolvent individual debtors, the FRIA provides for (a) the suspension of payments, when the debtor possesses sufficient properties to cover all his debts but foresees the impossibility of meeting them when they respectively fall due, (b) voluntary liquidation, initiated by the debtor who does not have sufficient properties to cover his liabilities and owes debts exceeding PHP500 thousand, and (c) Involuntary liquidation, initiated by creditors with claims aggregating at least PHP500 thousand. FRIA requires that the Liquidation Plan and its implementation shall ensure that the concurrence and preference of credits as enumerated in the *Civil Code of the Philippines* and other relevant laws shall be observed, unless a preferred creditor voluntarily waives his preferred right. Credits for services rendered by employees or laborers to the debtor shall enjoy first preference under article 2244 of the Civil Code, unless the claims constitute legal liens under articles 2241 and 2242 thereof. "The Asia-Pacific Restructuring and Insolvency Guide 2006" provides details on the restructuring and insolvency frameworks of Asia-Pacific countries.
Singapore	Singapore has a well-established, comprehensive corporate bankruptcy and insolvency statutory framework, which is largely set forth in the *Companies Act*. The corporate bankruptcy and insolvency laws primarily stem from English and Australian sources, and remain similar in many respects to the legislation of those jurisdictions. Singapore laws have progressively developed over the years to keep pace with developments in other jurisdictions. "The Asia-Pacific Restructuring and Insolvency Guide 2006" explains the restructuring and insolvency frameworks of Asia-Pacific countries, including information on Singapore.
Thailand	According to the *Bankruptcy Act B.E. 2483* (1940), corporate bondholders shall be treated as ordinate creditors. In addition, under the *Securities and Exchange Act B.E. 2535* (1992) and "Trust for Transactions" in the *Capital Market Act B.E. 2550* (2007), if the issuer of corporate bonds sets up a reserved account or sinking fund in a form of trust, bondholders shall have bankruptcy remoteness and ultimately shall have the rights in that trust property. When the company goes bankrupt, corporate bondholders shall have the right to the property of the company to receive performance of an obligation due to them according to the following ranks: 1. Bondholders for which the issuer has set up reserve account or sinking fund in a form of trust 2. Secured creditors 3. Unsecured creditors There is no explicit legal protection of the netting procedures as well as the settlement finality when insolvency is involved. Consequently, it cannot be ruled out that transactions settled in the Thailand Securities Depository will not be protected against a court decision in the event a participant becomes insolvent.
Viet Nam	In Viet Nam, a bankruptcy of a corporate bond issuer has not occurred yet. If it happens, the *Bankruptcy Law 2004* will be applied. "The Asia-Pacific Restructuring and Insolvency Guide 2006" provides details on the restructuring and insolvency frameworks of Asia-Pacific countries. According to this Guide, prior to October 2004, the legal framework for bankruptcy in Viet Nam consisted of the *Law on Business Bankruptcy* dated 30 December 1993, the *Decree on Business Bankruptcy* dated 23 December 1994, and various subordinate legal instruments (collectively referred to as the 'old Bankruptcy Law'). The old *Bankruptcy Law* was generally considered to be deficient and, by the end of the East Asian economic crisis in 2002, the courts had received only 151 petitions, with a mere 46 of these resulting in a declaration of bankruptcy. The old *Bankruptcy Law* was replaced by the *Bankruptcy Law* dated 15 June 2004, which came into effect on 15 October 2004, and the *Resolution of the Judges' Council of the Supreme People's Court guiding the implementation of the Bankruptcy Law* dated 28 April 2005 (collectively referred to as the 'Bankruptcy Law'). The Bankruptcy Law applies to enterprises and cooperatives established in accordance with Vietnamese law. The list of enterprises covered is extensive and includes state-owned enterprises (SOEs), enterprises belonging to social and political organizations, limited liability companies, joint stock companies, partnerships, private enterprises and foreign-invested enterprises (FIEs). The Bankruptcy Law does not apply to individuals or certain small business entities such as registered family and household businesses. The law stipulates that additional regulations will be issued to address the insolvency of enterprises in certain specific sectors, including:

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Table 9. continuation

Jurisdiction	Bankruptcy Procedures
	(i) national defense and security; (i) finance, banking and insurance; and (ii) other sectors directly providing public utility products and services. To date, however, such detailed laws have not been issued. Voluntary liquidation and restructuring are addressed by separate legal frameworks depending on the type of enterprise. An enterprise experiencing financial difficulties may consider restructuring or terminating its operations in accordance with the relevant legislation. Chapter VII of the *Law on Enterprises*, which governs limited liability companies, joint stock companies, partnerships and private enterprises, deals with the dissolution and reorganization of enterprises and allows for the division, separation, consolidation, merger and conversion of enterprises. The *Law on Foreign Investment* governs the dissolution, division, demerger, consolidation and conversion of FIEs. Both the *Law on Enterprises* and the *Law on Foreign Investment* were replaced by a unified *Law on Enterprises* which was passed on 29 November 2005 and became effective on 1 July 2006, and which contains similar provisions. Chapter VII of the *Law on State-Owned Enterprises* deals with the reorganization and dissolution of SOEs.

Source: ADB Consultants, based on research materials and market visit information.

X. Form of Bonds (Settlement Method) and Status (Bearer/Registered)

Table 10. Form of Bonds (Settlement Method) and Status (Bearer/Registered)

Jurisdiction	Form of Bonds (Settlement Method)	Status (Bearer/Registered)
People's Republic of China	• Book-entry form	Registered. (Bonds are generally getting scripless in a central register and registered in the account holder's or bondholder's name; some older bearer bonds may still exist.) (For China Central Depository and Clearing [CCDC]- settled bonds in the China Inter-bank Bond Market, management of the bearer-bond library was centralized by CDCC in 1998, and 2001 saw the end of bearer bonds.)
Hong Kong, China	• Book-entry form (dematerialized) for Exchange Fund paper, and • Global note form for corporate bonds	Bearer/Registered
Indonesia	• Book-entry (from 2000) • Physical certificates still exist (issued prior to 2000)	Bearer/Registered
Japan	Book-entry form (Completely dematerialized, except for a few non-central securities depository (CSD)-settled private placed notes)	Registered
Republic of Korea	• Book-entry form 1. Dematerialized securities Securities which are not issued in paper form and whose ownership is held and transferable by book entry in a ledger maintained by a CSD or account management institution. 2. Immobilized securities Physical securities and non-certificated securities held and transferred by book entry in a ledger maintained by a CSD or account management institution.	Bearer/Registered
Malaysia	• Listed bonds: Book entry at Bursa Malaysia Depository • Unlisted debt securities: Book entry at Bank Negara Malaysia	Basically, registered. Cagamas papers are unsecured bearer bonds issued by Cagamas, the national mortgage corporation established in 1986 to promote the secondary mortgage market in Malaysia.

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Table 10. continuation

Jurisdiction	Form of Bonds (Settlement Method)	Status (Bearer/Registered)
Philippines	• Government Securities: Book entry in Registry of Scripless Securities or in Philippine Depository and Trust Corporation (PDTC) • Scripless Corporate Bonds: Book entry in PDTC • Physical Corporate Bonds: Endorsement and actual delivery of physical certificates with duly notarized Deed of Assignment	Bearer/Registered. Dematerialization/Immobilization versus Physical Securities: Both equities and debt securities are legally recognized in physical and dematerialized form. In the organized market for debt securities, however, debt securities must be in dematerialized form and cannot be listed if the same are still in physical form, even if immobilized.
Singapore	• Book entry for government bonds • The Central Depository Pte. holds universal certificates for physical bonds	Bearer/Registered. A foreign issuer is normally required to appoint a paying agent in Singapore while the debt securities are quoted on the Exchange and upon the issue of debt securities in definitive form. The Exchange may accept other arrangements to enable definitive certificate holders of the bearer debt securities in Singapore to be paid promptly.
Thailand	• Book entry • Promissory notes (PNs) and commercial papers are physical, bearer instruments. In accordance with sections 225 to 228 of the *Securities and Exchange Act* (SEA), immobilization in the Thailand Securities Depository (TSD) system has been arranged through the transfer of securities by book entry. The transfer of securities by book entry shall be deemed to be the delivery of securities, which constitutes the legal basis for the validity of securities transfer under section 199 and section 51 of the SEA. Moreover, securities transferred into the name of the TSD shall be presumed to be securities held by the TSD on behalf of its members or for any customers of its members. However, there is no explicit legislation for the dematerialization of securities.	Bearer/Registered. PNs are physical, bearer instruments issued by banks and other financial institutions.
Viet Nam	• Book entry • Municipal bonds are physical, bearer instruments. • Corporate bonds and state-owned enterprises bonds can be held in bearer or registered form. • Listed corporate bonds have to be deposited at the Vietnam Securities Depository to be eligible for trading on the Exchanges	Bearer/Registered

Source ADB Consultants, based on research materials and market visit information.

XI. Exchangeability of Scripless Bonds to Physical Bonds

Table 11. Exchangeability of Scripless Bonds to Physical Bonds

Jurisdiction	Exchangeability of Scripless Bonds to Physical Bonds
People's Republic of China	No
Hong Kong, China	Yes
Indonesia	Yes
Japan	No
Republic of Korea	Yes
Malaysia	Yes
Philippines	Yes
Singapore	Yes
Thailand	Yes
Viet Nam	Yes

Source ADB Consultants, based on research materials and market visit information.

XII. Transfer of Securities (or Property Rights) and Finality of Settlement of Scripless Bonds

Table 12. Transfer of Securities (or Property Rights) and Finality of Settlement of Scripless Bonds

Jurisdiction	**Transfer of Securities** (or Property Rights)	Finality of Settlement
People's Republic of China (PRC)	**Transfer of Entitlement and Ownership of Securities** **1. First,** according to the "Securities Law of PRC revised in 2005: Article 157," a securities registration and clearing institution (such as China Securities Depository and Clearing Corporation [CSDCC], China Central Depository and Clearing [CCDC] or Shanghai Clearing House) shall perform the following functions: a. The establishment of securities accounts and settlement accounts; b. The custody and transfer of securities; c. The registration of roster of securities holders; d. The settlement and delivery for listed securities trading of a stock exchange; e. The distribution of securities rights and interests on the basis of the entrustment of issuers; f. The handling of any inquiry relating to the aforesaid business operation; and g. Any other business operation as approved by the securities regulatory authority under the State Council. **2. Second,** a securities registration and clearing institution (such as CSDCC or CCDC) takes the following measures to guarantee a sound operation of its business: A securities registration and clearing institution's (such as CSDCC/CCDC) rules are formulated to regulate securities depository and clearing activities, protect the rights and interests of investors, maintain the order of the depository and clearing activities, mitigate securities depository and clearing risks, and promote an efficient securities market in accordance with the *Securities Law of the People's Republic of China, Company Law of the People's Republic of China* and other applicable laws and regulations. **3. Security Account Management System** Securities shall be credited to the beneficiary's account, unless otherwise provided by applicable laws, regulations and requirements of the China Securities Regulatory Commission that securities will be credited to the nominal holder's account. The investor shall apply with the CSDCC or CCDC for establishing the securities account for recording the balance and changes of securities held by the investor with reliable, accurate and complete account opening information. The CSDCC or CCDC may establish the securities account directly or designate a qualified securities company as the account-opening agent. **4. Securities Registration System** New securities are typically issued in electronic form. The securities issuer shall make the initial public offer holder register and other relevant materials available for the CSDCC or CCDC to establish the original holder register of such securities. The issuer is responsible to guarantee the legality, authenticity, accuracy and integrity of materials it provides to the CSDCC or CCDC. The CSDCC shall maintain the holder register of a listed security according to the settlement records of securities transactions. In case of securities transfer in the nature of negotiated or forced transfer, heritage, donation and government transfer, etc., the CSDCC or CCDC shall process changes in the balance in securities accounts and the shareholder register in line with the operating rules. **5. Central Depository System** To participate in securities investment, the investor shall enter into a securities brokerage, custody and clearing agreement with the securities company. The CSDCC or CCDC shall prescribe and disseminate the mandatory provisions in relation to the securities depositary and clearing service in the securities brokerage, custody and clearing agreement, which shall include, but not limited to: a. The Securities Company shall place the trading instructions upon client's entrustment, execute settlement of each valid transaction and take corresponding settlement responsibility in line with the securities trading rules; the securities transfer between the securities company's securities settlement account and its client's account shall be executed by the CSDCC or CCDC commissioned by the securities company after the market close. b. The investor and a securities company involved in a collateralized repurchase agreement shall provide the required pledged securities to the CSDCC or CCDC in accordance with the operating rules; the liabilities between the investor and the securities company will not prejudice the CSDCC's or CCDC's pledge rights on the pledged securities.	Bonds are transferred on T, cash on T+1. Finality of trade is not so much the issue in the PRC bond market as the actual transfer of the entitlement takes place in the form of the owner registration, according to the Chinese legal concept underlying all legislation; hence, finality of trade is not an important concept, like in mature markets. Final and irrevocable on T+1.

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Table 12. continuation

Jurisdiction	**Transfer of Securities** (or Property Rights)	Finality of Settlement
	c. The securities company shall process the transfer of securities custody to another securities company upon the client's request, in line with relevant operating rules of the stock exchange and the CSDCC or National Association of Financial Market Institutional Investors and CCDC. (Compared to other ASEAN+3 markets, a professional custody/intermediary system is only now evolving in PRC.)	
Hong Kong, China	Transfers of interests in bonds: Both Bank for International Settlement (BIS) Model 1 (gross-gross) and BIS Model 3 (net-net). Transfer of title can be evidenced through registration. 1. Transferees and transferors should send transfer instructions to the CMU for matching and settlement. The transfer of ownership becomes effective upon matching a debit instruction with the corresponding credit instruction and registration in the book entries in the securities accounts of CMU Members within the CMU Service. 2. Entitlement perfection against the third party and Finality of transactions a. Real-time securities transfer transactions on the CMU Members' Terminal or SWIFT16 are immediately completed upon successful debiting of funds from the buyer and debiting of securities from the seller, and are deemed final (not subject to waiting time). b. End-of-day securities transfer transactions are balanced during CMU end-of-day settlement processing. c. Notwithstanding the mode/means of transfer, all local securities transfer instructions affected through the CMU Service shall be settled by the Hong Kong Monetary Authority debiting or crediting the relevant securities accounts of the CMU Members concerned, and once debited or credited to such securities accounts; such securities transfer instructions shall be deemed made, completed, irrevocable and final. d. The situation can be more complex where the securities transfer instructions are effected through linkages with other regional central securities depositories (CSDs) including the Korea Securities Depository, AustraClear, and China Central Depository and Clearing (CCDC), or with international CSDs (ICSDs), including Clearstream or Euroclear. e. It is also worth noting that the finality of the transactions settled through the CMU system is protected from insolvency laws (including liquidators and receivers) under section 19 of the CSSO (Cap 584). For example, the securities transactions, once settled, may not be set aside on grounds of unfair preference. f. Prohibited transfers i. On-Exchange naked short selling of listed securities is prohibited in Hong Kong, and all CMU Members must undertake not to incur a short position in any of the CMU Instruments. Securities may only be sold at or through a recognized stock market if the seller (as principal) or his principal (himself as agent) has, or has reasonable grounds for believing that he or the principal has, a presently exercisable and unconditional right to vest the securities in the purchaser (section 170 of the Securities and Futures Ordinance [SFO]). ii. The concept of "presently exercisable and unconditional right to vest the securities in the purchaser" is interpreted with some flexibility iii. On-Exchange covered short sales (i.e., short selling orders) in "designated securities" (as designated by the HKSE pursuant to the Short Selling Regulations in the Eleventh Schedule to the Listing Rules) are permitted provided that: 1 the seller (whether acting as principal or agent) must, at the time of placing a short selling order, identify it as a short selling order and provide documentary assurance that the sale is "covered" and 2 an intermediary who receives a short selling order must ensure that he has obtained a documentary assurance that the sale is "covered'. iv. The maximum penalties for contravention of section 170 of the SFO are a fine of HKD100,000 and imprisonment for 2 years. v. The Hong Kong Securities Clearing Company Limited charges a default fee of 0.50% of the market value of failed transactions.	For bonds settled on CMU, final and irrevocable upon settlement (Clearing and Settlement Systems Ordinance [CSSO]). For bonds settled in the Central Clearing and Settlement System, final and irrevocable upon settlement.
Indonesia	In general, the transfer of entitlement and ownership of scripless securities are considered completed if the related transaction status is reflected as "Settled" in the Central Securities Depository's (CSD) system. In case of receipt transaction, the holding status of the scripless securities in the securities account maintained in the CSD is reflected as "Available". The third-	The exchange of cash and securities is final when a settlement can no longer be unwound.

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Table 12. continuation

Jurisdiction	**Transfer of Securities** (or Property Rights)	Finality of Settlement
	party entitlement will be ensured by showing the holding position in the accounts maintained with the CSD or in the holding confirmation issued by CSD. a. Indonesian Central Securities Depository (KSEI) for Scripless, Debt Securities and *Sukuk* For scripless shares, debt securities and *Sukuk*, KSEI maintains the records of investors' assets in an electronic book-entry system, as a domestic CSD. Securities transferred to the depository system are automatically registered without any additional documentation. In the books of the issuers, the securities remain registered in the names of the account holders maintained in the depository. The issuers receive regular update on the bondholders' list from KSEI for their scripless securities while maintaining the administration of physical securities, which are registered under the name of the securities holders. b. Bank Indonesia (BI) for Scripless Government Bonds and Certificate of Bank Indonesia (SBI) BI, as the central registry for government bonds and SBI, maintains an electronic registration of the sub-registry's positions; each sub-registry in turn maintains the account details of each beneficial owner. SBI is normally settled on T+1. For government bonds, the settlement cycle in the secondary market is T+2 or as agreed between parties involved. Settlement of government bonds and SBI is through Bank Indonesia- Scripless Securities Settlement System, a system to facilitate online settlement transactions between the sub-registries.	The finality of settlement is stipulated in Exchange Rule No. II.F.3.5. Final and irrevocable on T+3. Finality eliminates the main legal risks of payment and settlement systems, reduces systemic risk, and ensures the smooth operation of a system.
Japan	**Japanese Government Bonds at the Bank of Japan and corporate bonds at the Japan Securities Depository Center (JASDEC) adopt BIS Model 1 Delivery versus Payment (DVP) (gross-gross):** BIS Model 1—Systems that settle transfer instructions for both securities and funds on a trade-by-trade (gross) basis, with final (unconditional) transfer of securities from the seller to the buyer (delivery) occurring at the same time as final transfer of funds from the buyer to the seller (payment). **Legal Definition of Debt Instruments:** **1. Uniform Legal Framework for All Types of Securities** a. The Law Concerning Book-Entry Transfer of Corporate Bonds, Stocks, and Other Securities provides the legal basis for the book-entry transfer system and dematerialization of all securities. b. JASDEC performs the role of the CSD in the book-entry transfer system in securities other than government bonds. In this law, the term CSD means "Designated Book-Entry Transfer Institution." Participants in the book-entry transfer systems must observe the rules established by the book-entry transfer institution. **2. Dematerialization versus Physical Certificates** a. As described above, according to this law and the above system for securities to be distributed, it has realized the complete dematerialization. b. The *Companies Act* allows the form of physical bond certificates to be issued regardless of the book-entry transfer method. However, in this case distribution in the market cannot be expected, and it is also not allowed to be owned in tax-exempt status under the Japanese taxation system. **3. Legal Ownership Structure of Dematerialized or Immobilized Securities** a. In the book-entry transfer institutions, securities companies and financial institutions, etc. as "Account Management Institution" may open an account for securities transfer. b. In the transfer account, the balance of their own account and the overall customer account are recorded respectively. c. Bondholders open the transfer account with the book-entry transfer institution or account management institution. By performing an electronic transfer to an account transfer record, the securities are entitled to be owned by the bondholder. d. Bondholders have the property rights (or legal position) against third parties and the issuers by records in their account. e. Should there be an insufficient transfer-account book records in the customer's account due to the over-recording, the "duty of retirement of over-recording" is generated by account management institutions. (In the event of insufficient balance in a customer account due to over-delivery, the account management institution is required to rectify the records.)	Final and irrevocable upon the recording in accounts on the books of relevant parties.

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Table 12. continuation

Jurisdiction	**Transfer of Securities** (or Property Rights)	Finality of Settlement
Republic of Korea	Over the Counter: BIS Model 1 (gross-gross). Exchange: - Government Bonds: modified BIS Model 1a - Others: BIS Model 3 (net-net) **Ownership Transfer Mechanism** 1. Dematerialized securities: Delivered by book entry across the accounts of the transferor and transferee opened at the CSD or account management institution. 2. Immobilized securities: Same as dematerialized securitiesb Securities deposit is a process through which rights over securities are transferred, altered, and nullified by book entry without the actual movement of physical certificates. To benefit from the securities deposit system, participants such as brokers or institutional investors have to open participant accounts at the CSDs and deposit their securities at the CSDs. In Republic of Korea, the Korea Securities Depository (KSD) is the single CSD and provides securities deposit service. The securities deposit system consists of KSD as an operator, participants and their customers as users, and deposit-eligible securities as objects. Securities holdings of participants are held in custody on a fungible basis at KSD and are settled on a book-entry basis by recording debit-credit on the account book, a legal ledger kept by KSD and its participants.	Final and irrevocable upon transfer, except counterparty's agreement. No exceptions for the Exchange-traded market settlement. Settlement data are transferred from Korea Exchange to KSD directly through network clearing facilities for exchange market.
Malaysia	In Malaysia, nearly all securities are scripless, with securities transferred electronically via Bank Negara Malaysia's Real-Time Electronic Transfer of Funds and Securities system, which is operated by its wholly-owned subsidiary, Malaysian Electronic Clearing Corporation (MyClear). Transfer instructions are conducted on a trade-by-trade basis. Listed bonds: BIS Model 2: Systems that settle securities transfer instructions on a gross basis, with final transfer of securities from the seller to the buyer (delivery) occurring throughout the processing cycle, but settle funds transfer on a net basis, with final transfer of funds from the buyer to the seller (payment) occurring at the end of the processing cycle. Unlisted debt securities: BIS Model 1: Systems that settle transfer instructions for both securities and funds on a trade-by-trade (gross) basis, with final (unconditional) transfer of securities from the seller to the buyer (delivery) occurring at the same time as final transfer of funds from the buyer to the seller (payment).	Finality of settlement is achieved once the book-entry transaction is shown in a settled status.
Philippines	BIS Model 1 (gross-gross) for government securities and for scripless corporate bonds. Unlisted corporate bonds – subject to mutual agreement. Securities in the organized market are transferred in book entry form. All trade settlements occurring through the Philippine Dealing and Exchange organized market are done on a gross, trade-for-trade basis.	Final and irrevocable upon settlement at the Registry of Scripless Securities and/or Philippine Depository and Trust Corporation. Final and irrevocable upon issuance of physical certificates in favor of new owner.
Singapore	BIS Model 2 (gross - gross) - Systems that settle securities transfer instructions on a gross basis, with final transfer of securities from the seller to the buyer (delivery) occurring throughout the processing cycle, but settle funds transfer on a net basis, with final transfer of funds from the buyer to the seller (payment) occurring at the end of the processing cycle.	Only for settlement date trades settling via depository's enhanced DVP system. Government Securities: Final upon transfer of funds and securities on settlement date.
Thailand	Thailand Securities Depository (TSD) provides BIS Model 1 and Model 3. TSD assumes the role of central counterparty (CCP) for multilateral netting procedure that takes place before the settlement is executed. This netting arrangement is enforceable under sections 341 to 348 of the *Civil and Commercial Code* and section 102 of the *Bankruptcy Act B.E. 2483* (1940). However, since section 102 of the *Bankruptcy Act* allows netting of obligations only if the cause of indebtedness incurred before the date of the receivership order, the TSD may not net its obligations against the obligations of the insolvent participant which arise on that date.	Securities: upon settlement of a transfer made through TSD or Bank of Thailand Automated High Value Transfer Network. Finality of settlement: TSD rule clearly states the timing of finality and the way finality is achieved. The transfer of funds is enforced by Bank of Thailand regulations.

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Table 12. continuation

Jurisdiction	**Transfer of Securities** (or Property Rights)	**Finality of Settlement**
		However, there is no explicit legal protection for settlement finality. It can be challenged by a court decision. In accordance with section 115 of the *Bankruptcy Act*, the court is empowered to reverse the debtor's transfer of assets during the three months prior to an application to adjudicate him as bankrupt and thereafter if the court finds that the debtor transfers such assets with the intention to give undue preference to a creditor, and if the official receiver is able to prove that the transfer has been made by the debtor with the intention to cause other creditors a disadvantage. Thus, if the court orders the receivership of a clearing house member or a settlement bank, the court may cancel the transfer of funds and securities made during that period.
Viet Nam	BIS Model 3 (net-net); DVP conducted simultaneously by the Vietnam Securities Depository (VSD) for securities delivery, and BIDV for cash settlement. Listed bonds: entry in the VSD. Unlisted bonds: depends upon charter and terms and conditions of the bonds, but normally the bond certificates are entered into the bond register of the issuer. Transfer of securities ownership: article 54 of Securities Law No. 70/2006/QH11: 1. The transfer of securities ownership with respect to categories of securities registered at the Securities Depository Centre shall be undertaken via VSD; 2. The validity of the transfer of securities ownership at VSD shall be as follows: a. Where securities have been centrally deposited at VSD, the transfer of securities ownership shall take effect on the date of book entry in the securities depository account at VSD. b. Where the securities have not been centrally deposited at VSD, the transfer of securities ownership shall take effect on the date of recording on the securities registration book managed by VSD. According to article 4 of *Circular 43 /2010/TT-BTC* dated 25 March 2010 amending *Decision 87/2007/QD-BTC,* the transfer of ownership of listed or registered for trading securities shall be subject to the following principles: Any securities holder intends to transfer his ownership of securities shall deposit such securities at VSD via depository members to buy or sell such securities via Stock Exchanges or transfer his ownership as prescribed in Clause b of this Article (except for any transfer of ownership due to inheritance factors or the fact that the issuer redeems it shares from employees upon employment termination). -VSD shall only execute transfers of ownership of securities outside its securities trading system if such transfers are non-commercial or fail to be executed via trading systems at Stock Exchanges. Such transfers shall include the following cases: + Making as a present, inheriting according to the Civil Law + Odd-lot transactions according to the law of securities and securities market. + Issuers/labor unions of issuer buyback preferred shares of their employee which terminate their labor contracts to become treasury shares and bonus shares for their current employee. + Issuers use treasury shares to bonus/labor union of issuer distribute bonus shares for their employee. + Foundation shareholder transactions in restricted time. + Issuers change their strategic shareholders in restricted time. + In case if securities have registered in VSD and have accepted in principal by Exchanges but have not listed on Exchanges yet.	3:00 p.m. on Settlement Date is assumed as effective settlement time for both cash and securities.

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Table 12. continuation

Jurisdiction	Transfer of Securities (or Property Rights)	Finality of Settlement
	+ Investors leave securities in trust for fund manager in case fund manager accepts to manage trusted investment portfolio by assets. Different from equity, there is no general meeting for bond holders. Bond is debt instrument so that the rights of bond holder are stipulated according to Decree 01/2011/ND-CP: + Bondholder are guaranteed for in-time and sufficient settlement of interest and principal. + Bondholder has entitlement to transfer, give, make as a present, inherit, discount, and pledge in credit relationship and civil relationship according to current law. As for guarantee for bond settlement, + As for corporate bond which guaranteed by government (according to Decree 01/2011/ND-CP): the government commits to protect bondholders' interests. + As for guaranteed corporate bonds (according to Clause 44 of Decree 52/2006/NDCP): if the issuer fails in interest and principal settlement, the guaranteed asset will be liquidated to refund the due debt. In case other credit organizations act as settlement guarantor, they have responsibilities to refund the debt to bondholder. Currently, there is no specified company system to guarantee for corporate bond settlement in Viet Nam.	

[a] Modified BIS Model 1: Netting bonds per issue and netting payments per issue.
[b] 1) The account structure of dematerialized and immobilized securities is explained based on the two-tier account structure. 2) The form of ownership for dematerialized securities cites the common view in the academia of Japan, and the form of ownership for immobilized securities is explained in terms of the Korean deposit and settlement system.
Source: ADB Consultants, based on research materials and market visit information

XIII. Legal Basis and Definition of "Settlement and Clearing"

Table 13. Legal Basis and Definition of "Settlement and Clearing"

Jurisdiction	Form of the Bonds (Settlement Method)	Definition of "Settlement and Clearing"
People's Republic of China	• Book entry	After a trade has been matched by a trading system, it needs to be cleared and settled so that the seller gets paid and the buyer gets ownership of the security traded. 1. Clearing Clearing involves all steps in post-trade processes apart from the final settlement, i.e., apart from the final payment and change in ownership. 2. Settlement Settlement is the last step in the post-trade process. Settlement may be: a. Net: obligations between participants are set-off against each other, or, b. Gross: each transaction is settled individually, and may be: real-time: transactions are settled as and when trades are agreed with no delay, or occur at regular intervals, usually on a rolling schedule at a specific time, or at the end of a day', since the China Securities Depository and Clearing Corporation sets a specific time within the business day (when cash payments are to be effected by).
Hong Kong, China	• Book-entry form (dematerialized) for Exchange Fund papers, and • Global note form for corporate bonds	The clearing and settlement system in the Clearing and Settlement System Ordinance means a system established for: (a) the clearing or settlement of payment obligations; or (b) the clearing or settlement of obligations for the transfer of book-entry securities, or the transfer of such securities
Indonesia	• Book entry (from 2000) • Physical certificate still exists (issued prior to 2000)	• The definition of clearing in Bapepam-LK regulation No.III.A.10 on securities transactions is as follows: "Clearing is a process of determining the rights and obligations that arise from Exchange transactions." While the definition of settlement as referred in the Indonesian Central Securities Depository regulation on central depository services (chapter 8), "Securities transaction settlement services are part of Central Depository services provided for the fulfillment of rights and obligations as the results of Stock Exchange Transactions or Over-the-Counter Transactions conducted by means of book-entry of Securities and/or funds between Securities accounts."

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Table 13. continuation

Jurisdiction	Form of the Bonds (Settlement Method)	Definition of "Settlement and Clearing"
Japan	• Book entry (Dematerialized)	A securities clearing and settlement system is defined as follows: 1. A Book-Entry Transfer Institution as defined by article 2, paragraph 2 of the *Act on Transfer of Bonds, Shares,* etc., 2. A Financial Instruments Clearing Institution as defined by article 2, paragraph 29 of the Financial Instruments and Exchange Act, or the so-called central counterparty (CCP) clearing agency. The Japan Government Bond Clearing Corporation is operating in the Japanese government bond market. On the other hand, the clearing institution for corporate bonds does not exist in Japan.
Republic of Korea	• Book entry	"Clearing" is a series of processes that a CCP performs to guarantee the settlement by netting the credits and liabilities between the sellers and the buyers and to instruct the settlement agency to settle. "Settlement" is the completion of a transaction, wherein the seller transfers securities or financial instruments to the buyer, and the buyer transfers money to the seller. It is classified into delivery versus payment (DVP) and free of payment (FOP) depending on connection or separation of delivery and payment. The Korea Exchange provides clearing services as a CCP for the stock market and also provides clearing and settlement services for the derivatives market. Meanwhile, the Korea Securities Depository provides settlement services for stock market and provides clearing services as well as settlement services for the over-the-counter market.
Malaysia	• Listed bonds: Book entry at Bursa Malaysia Depository • Unlisted debt securities: Book entry at Bank Negara Malaysia (BNM)	Definition of Clearing and Settlement: 1. Clearing (a) "Clearing" means the process of exchanging and reconciling payment items that result in the establishment of final positions for Settlement. (b) "Clearing facilities" mean a facility for the clearing or settlement of transactions in securities traded on a stock exchange or futures contracts traded on a futures market; a facility for the guarantee of settlement of transactions; or such other clearing or settlement facility or class of clearing or settlement facilities as the Commission with the approval of the Minister may allow. (c) "Clearing house" means a person whose activities or objects include the provision of clearing facilities. (d) The clearing house is the Bursa Malaysia Securities Clearing. 2. Settlement Based on provisions in the Capital Market and Services Act 2007, settlement, in relation to a market contract, means the discharge of the rights and liabilities of the parties to the market contract whether by performance, compromise or otherwise; and includes partial settlement effected in accordance with the rules of an approved clearing house. (a) All securities trades are generally settled based on a DVP basis. For all government securities and scripless corporate debt securities, ownership and transfers are reflected as book entries in the custody accounts with BNM in Real Time Electronic Transfer of Funds and Securities (RENTAS). (b) The settlement of the primary and secondary market transactions in government securities and unlisted corporate debt securities take place through the Scripless Securities Trading System, which is part of the RENTAS system. (c) US dollar-denominated debt securities and Sukuk will be settled in RENTAS on a DVP basis while those denominated in other foreign currencies may be settled on a non-DVP basis. (d) Scripless securities, including Malaysian government securities and selected debt securities and Sukuk, can also be settled internationally via major global custodian banks and international central securities depositories, such as Euroclear and Clearstream.
Philippines	• Government Securities: Book entry in the Registry of Scripless Securities or in the Philippine Depository and Trust Corporation (PDTC) • Scripless Corporate Bonds: Book entry in PDTC	• *Republic Act No. 87 99* or the *Securities Regulation Code* Chapter I, Title and Definitions, SEC. 3. Definition of Terms. "Clearing Agency" is any person who acts as intermediary in making deliveries upon payment to effect settlement in securities transactions. • Revised Implementing Rules and Regulations of the *Securities Regulation Code Rule 3* Definition of Terms C. Clearing agency is any entity that provides a facility to a broker dealer, salesman, or associated person of a broker dealer or another clearing agency for the performance of any of the following activities:

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Table 13. continuation

Jurisdiction	Form of the Bonds (Settlement Method)	Definition of "Settlement and Clearing"
	• Physical Corporate Bonds: Endorsement and actual delivery of physical certificates with duly notarized Deed of Assignment	(i) make deliveries in connection with transactions in securities; (ii) reduce the number of settlements of securities transactions or allocate settlement responsibilities in accordance with the rules issued by the Commission or the Exchange; and (iii) provide the means for the central handling of securities so that transfers, loans, pledges and similar transactions can be made by bookkeeping entry; or otherwise facilitate the settlement of securities transactions without physical delivery of securities certificates.
Singapore	• Book-entry for government bonds • Central Depository (Pte.) holds universal or global certificates for immobilized bonds	*Securities and Futures Act* (SFA) introduces a definition for "clearing or settlement," which covers any of the activities comprising post-trade matching and confirmation, clearance and settlement. • SFA Part III: Clearing Facilities Objectives of this Part 47. The objectives of this Part are — (a) to promote the safety and efficiency of clearing facilities that support systemically important markets or form an integral part of the financial infrastructure; and (b) to reduce systemic risk. Interpretation of this Part 48. (1) In this Part, unless the context otherwise requires — "settlement" in relation to a market contract, includes partial settlement. "market contract" means — (a) a contract subject to the business rules of a designated clearing house that is entered into between the designated clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the designated clearing house; or (b) a transaction which is being cleared or settled using the clearing facility of a designated clearing house and in accordance with the business rules of the designated clearing house, whether or not a novation referred to in paragraph (a) is to take place. General obligations 59. (1) A designated clearing house shall (a) as far as is reasonably practicable, operate a safe and efficient clearing facility; (b) manage any risks associated with its business and operations prudently; (c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public; (d) ensure that access for participation in its clearing facility is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of its facility and to protect the interests of the investing public; (e) maintain business rules that make satisfactory provision for (i) the clearing facility to be operated in a safe and efficient manner; and (ii) the proper regulation and supervision of its members; (f) enforce compliance by its members with its business rules; (g) have sufficient financial, human and system resources — (i) to operate a safe and efficient clearing facility; (ii) to meet contingencies or disasters; and (iii) to provide adequate security arrangements; and (h) ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.
Thailand	• Book entry	According to the Thailand Clearing House Rules and Regulations, "securities clearing and settlement" mean the payment, acceptance of payment, delivery, and taking delivery of, securities. According to Detailed Assessment of Observance of Thailand Securities Depositories of the Committee of Payment and Settlement Systems -International Organization of Securities Commission Recommendations for Securities Settlement Systems in April 2008: 1. Legal basis of the clearing and settlement The securities clearing and settlement activities in Thailand are governed and regulated by specifically issued laws and regulations and by provisions in other legislations and regulations. The main laws and regulations are: a. The *Civil and Commercial Code:* (e.g., provisions governing juristic acts, obligations, contracts); b. The *Securities and Exchange Act B.E. 2535* (1992) (SEA) (sections 50–55,199, 224–228); c. The *Public Limited Company Act B.E. 2535* (1992); d. The notifications, rules, and regulations issued by the Stock Exchange of Thailand, and the Thailand Securities Depository (TSD);

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Table 13. continuation

Jurisdiction	Form of the Bonds (Settlement Method)	Definition of "Settlement and Clearing"
		e. The agreement between members and the TSD as a central securities depository and a clearinghouse; f. *Bank of Thailand Automated High Value Transfer Network Rules and Regulations B.E. 2549* (2006); and g. The *Bankruptcy Act B.E. 2483* (1940).
Viet Nam	• Book entry	1. Securities Clearing According to Item 7 and Item 8 of article 2 - Decision No. 87/2007/QDBTC on registration, depository, clearing and settlement of securities, securities' clearing includes bilateral clearing and multilateral clearing. - Bilateral clearing means the method of clearing securities transactions which have been matched during the same day between any two trading parties with respect to the one type of securities, in order to determine the net sum and securities which must be settled by both parties. - Multilateral clearing means the method of clearing securities transactions which have been matched during the same day between all trading parties with respect to the one type of securities, in order to determine the net sum and securities which must be settled by both parties. The Vietnam Securities Depository (VSD) clears settlement obligations (the receivables and the payables) towards transactions of listed stocks, fund certificates, corporate bonds having the same payment time and manner at two Stock Exchanges with a view to calculating settlement obligations to receive or to pay through each depository member 2. Securities Settlement According to article 32 of *Decision No. 87/2007/QD-BTC*, VSD settles securities based on bilateral and multilateral clearing results, and then settles each transaction of listed and unlisted securities. Securities delivery is made by VSD, cash payment is made by the settlement bank, and the DVP principle is to be observed. Article 3 of VSD guideline on securities clearing and settlement: VSD shall clear securities, funds and settle securities transactions in accordance with the principles prescribed in articles 32 and 33 of the "Guidelines on Securities Registration, Depository, Clearing and Settlement" issued with D*ecision No. 8712007/QDBTC* dated 22 October 2007 by the Minister of Finance and article 11 of *Circular No. 43/2010/TT-BTC* dated 25 March 2010 by the Minister of Finance on amending and supplementing the Guidelines on Securities Registration, Depository, Clearing and Settlement issued with Decision No. 87/2007/QD-BTC dated October 22, 2007 by the Minister of Finance.

Source: ADB Consultants, based on research materials and market visit information.

XIV. Registration and Issuing Approval Procedures of Bonds

Table 14. Registration and Issuing Approval Procedures of Bonds

Jurisdiction: People's Republic of China (PRC)

Registration and Issuing Approval Procedure

Market	Inter-bank Bond Market (Over the Counter, OTC)	Commercial bank counter market (OTC)	Exchange bond market (Shanghai Stock Exchange and Shenzhen Stock Exchange)
MAIN REGULATOR	People's Bank of China (PBOC)	PBOC	China Securities Regulatory Commission (CSRC)

There is no universal approval procedure for bond issues in PRC.
For different types of bonds, there are different issue examination and approval authorities (some bonds go through registration and recording system).

Bond classes	Issue examining and approval authority	Related regulations
Treasury Bonds	National People's Congress Standing Committee (balance control)	*Law of the People's Republic of China on Supervision by the Standing Committees of the People's Congresses at all Levels* *Regulations of the Treasury Bills of the People's Republic of China*

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<tr><th>Jurisdiction</th><th>Registration and Issuing Approval Procedure</th></tr>
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<table>
<tr><th>Bond classes</th><th>Issue examining and approval authority</th><th>Related regulations</th></tr>
<tr><td>Central Bank Bills</td><td>PBOC</td><td>Law of the People's Republic of China on the People's Bank of China</td></tr>
<tr><td>Policy Financial Bonds (Policy Bank Bonds)
Commercial Bank Bonds
Special Financial Bonds
Non-bank Financial Institution Bonds</td><td>PBOC,
China Banking Regulatory Commission (CBRC)</td><td>Administrative Rules for the Issuance of Financial Bonds in the National Inter-bank Bond Market

"Several Issues Regarding the Issuance of Hybrid Capital Notes by Commercial Banks"
"Notice on the Issuance of Financial Bonds by Financial Leasing Companies and Auto Financing Companies"
The Rules on the Issuance of Subordinated Bonds By Commercial Banks</td></tr>
<tr><td>Securities Company Bonds</td><td>CSRC</td><td>Interim Measures for the Administration of Bonds of Securities Companies</td></tr>
<tr><td>Securities Company Commercial Paper</td><td>PBOC,
CSRC</td><td>Securities Company Short-term Financing Notes Regulations</td></tr>
<tr><td>Enterprise Bonds
State-Owned Enterprises Bonds</td><td>National Development and Reform Commission (NDRC)</td><td>Enterprise Bond Management Ordinance

"On March 19, 2007 Notice of problems related to the first corporate bond issue size and examination approval in 2007"</td></tr>
<tr><td>Commercial Paper, Medium-term Notes</td><td>PBOC authorized the National Association of Financial Market Institutional Investors to manage registration</td><td>"On January 2, 2008 promotion of the development of corporate bond market and simplification of procedures of issue examination"

Measures on the Administration of Non-Financial Corporate Debt-Financing Instruments at the inter-bank Bond Market"

"Inter-bank Bond Market, non-financial corporate debt financing instruments disclosure rules"</td></tr>
<tr><td>Asset-backed Securities</td><td>CBRC,
PBOC</td><td>"Administration of Pilot Projects for Securitization of Credit Assets Procedures"</td></tr>
<tr><td>Listed Corporate Bonds</td><td>CSRC</td><td>Interim Regulations on Administration of Corporate Bonds</td></tr>
<tr><td>International Agency Bonds</td><td>PBOC,
Ministry of Finance,
NDRC,
CSRC</td><td>Provisional Administrative Rules on International Development Institutions' Issuance of RMB Bonds</td></tr>
<tr><td>Convertible Bonds</td><td>CSRC</td><td>Interim Measures for the Administration of Convertible Bonds

"Issue of Convertible Bonds By Listed Companies Implementing Procedures"</td></tr>
<tr><td>Issuer in the Inter-bank Bond Market</td><td>PBOC</td><td>"National Inter-bank Bond Market trading circulation audit rules"</td></tr>
</table>
</td></tr>
<tr><td>Hong Kong, China</td><td>Regulations and rules on issuing debt instruments:
1. For bonds to be listed on the Stock Exchange of Hong Kong (SEHK), bond issuers should observe, among others, the Listing Rules which set out the qualifications for listing, application procedures and requirements, listing documents and arrangements etc.
2. Issuers of bonds to be listed on the SEHK should also observe the Trading Rules promulgated by the Hong Kong Exchange and Clearing should be observed.
3. For bonds to be listed on the HKSE, issuers should also observe the requirements of the Listing Rules, as well as Parts II and XII of the CO including section 44B.</td></tr>
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Table 14. continuation

Jurisdiction	Registration and Issuing Approval Procedure
	4. Save for the above and the specific laws mentioned above bonds issued by different types of entities, there are in general no other regulations governing the issuance of listed or non-listed bonds in Hong Kong, i.e., a. Both domestic and foreign entities are eligible to issue debt instruments in Hong Kong. b. Foreign entities interested in raising funds in Hong Kong should however ascertain whether it is permitted under the law of their jurisdictions. c. If the debt instruments are to be listed on the SEHK, issuers have to comply with the requirements for reporting and disclosure of information, etc. as set out in the Listing Rules and other relevant documents of the SEHK.
Indonesia	A Registration Statement becomes effective within 45 days from the date of receipt by Bapepam-LK completely, or from the date of final amendment delivered by the issuer or requested by Bapepam-LK. There is a rule related to Sustainable Public Offering (Shelf Registration) based on *Peraturan Bapepam dan LK Nomor IX.A.15: Penawaran Umum Berkelanjutan*, which allows the debit security or bond (*efek bersifat utang*, EBU) issued to the public in several stages. An issuer has to submit a Registration Statement to provide a Sustainable Public Offering with the following requirements: Under *Peraturan Bapepam dan LK Nomor IX.A.11: Penawaran Umum Efek Bersifat Utang Dalam Denominasi Mata Uang Selain Mata Uang Rupiah*, the initial public offering (IPO) of EBU denominated in currencies other than rupiah has to be in accordance with Bapepam-LK rules related to IPO. Additional information shall be disclosed in the prospectus.
Japan	**Registration and Issuance Procedure of Public Offering Bonds and Notes:** In order to make the information contained in the Securities Registration Statement (SRS) and its attachments accessible to general investors, the *Financial Instruments and Exchange Act* (FIEA) requires the SRS and its attachments to be filed by the issuer with the Director-General of the Kanto Local Finance Bureau or the relevant Local Finance Bureau (sometimes called "FB"), and for such filings to remain open for public inspection during a period of 5 years. In addition, the issuer must keep such documents at its head office and principal branch offices and make them available for public inspection. Once the SRS is filed with the relevant Finance Bureau, solicitation may be made; but before the securities are acquired by investors, the registration must have become effective. The registration becomes effective generally when 15 days have elapsed from and excluding the day of filing ("waiting period"). The relevant Finance Bureau may designate a shorter period or may notify the issuer that the registration will become effective immediately or will become effective on or after the day of filing if the relevant Finance Bureau concludes that the public can easily understand the contents of the filed registration documents or the information on the issuer has been widely disseminated to the public. In many cases, if the issuer is already filing continuous disclosure documents, the waiting period is shortened to seven days. If, prior to the effective date of the registration there occurs any change with respect to any material fact which should be stated in the SRS, or if there arises any situation prescribed by a relevant Cabinet Ordinance calling for the modification of the contents of the registration documents, the registrant should file an amendment to the SRS. The relevant Finance Bureau may, but is not obliged to, issue an order for filing an amendment to the SRS if it finds the registration documents defective or insufficient with respect to any material facts stated therein. Once an amendment to the SRS is filed, the aforementioned waiting period starts, on or several days after the day of filing of such amendment to the SRS, depending upon the nature of the amendment. The SRS is generally comprised of three sections: Information Concerning Securities, Information Concerning Issuer, Information Concerning Guarantor and Special Information. In addition, for the SRS for foreign Specified Securities referred to in section 2.03[3] below, the "Information Concerning the Legal System of the Home Country of the Issuer, etc." must also be disclosed. In the securities markets, in addition to the disclosure requirements, there are regulations concerning securities transactions under the FIEA designed to ensure fair trade. Following are the methods of filing the SRS. 1. Complete Disclosure Method The SRS must be filed by the issuer with the Director-General of the relevant Finance Bureau before the commencement of a public offering. 2. Attachment Method Companies that filed annual securities reports for the previous year may attach annual securities reports, semi-annual securities reports or quarterly securities reports and their amendments to the SRS in order to avoid duplicate filing. 3. Reference Method Companies that satisfy the requirements for (2) above, list their shares on the Stock Exchanges or OTC markets and also satisfy additional requirements under a Cabinet Ordinance may make reference in the SRS to the documents identified in (2) and extraordinary repots rather than attaching the entire documents. 4. Shelf Registration Method Frequent issuers that qualify to use the Reference Method can also use the Shelf Registration Method in order to render their issue more cost-efficient and timely.

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Table 14. continuation

Jurisdiction	Registration and Issuing Approval Procedure
	Any issuer who satisfies the requirements for registration by the Reference Method referred to above may register proposed offering(s) by filing with the relevant Finance Bureau a "shelf registration statement" setting out the period during which the securities are intended to be offered, the kind of securities, the proposed total amount of offering and the anticipated principal underwriters, in accordance with a Cabinet Ordinance. The shelf registration becomes effective after a shorter period (usually, 7 days) than the period in the case of filing the SRS. Once the shelf registration becomes effective, no individual SRS need be filed for the offering of any part of the securities covered by the shelf registration but the registrant should file with the relevant Finance Bureau a "supplement to the shelf registration statement" setting out the amount of offering and other terms of the offering. The shelf registration ceases to be effective upon the expiry of the intended period thereof. If, prior to such expiry, the offerings of the total amount registered have been completed, the registrant should file a "shelf registration withdrawal statement" with the relevant Finance Bureau. If, during the effective period of shelf registration, a certain situation arises as prescribed by the FIEA and Cabinet Ordinance, the registrant should file an "amendment shelf registration statement." No such amendment can be made to increase the total amount of offerings, change the proposed period of offerings, or change the kind of securities subject to the registration. Special provisions are made with respect to the shelf registration method for commercial papers. **TOKYO PRO-BOND Market Listing:** **A. Initial Listing Application for the listing of bonds on the TOKYO PRO-BOND Market:** a. The listing of bonds on the TOKYO PRO-BOND Market is carried out through an application by issuers. b. The Initial Listing Applicant is required to submit an Initial Listing Application and Initial Listing Application Documents to the Exchange for listing. i. The Initial Listing Applicant may consult or make inquiries to the Exchange prior to listing regarding the Initial Listing Application. ii. The Initial Listing Applicant shall state in the Initial Listing Application Documents that there are no false statements in the Documents. c. The Initial Listing Applicant is required to publish Specified Securities Information (specified securities information prescribed in article 27 to 31 of the FIEA) at the time of filing an application of a listing of bonds. i. Specified Securities Information is required to be prepared based on the format stipulated by the Exchange or other formats approved by the Exchange as appropriate. For example, the disclosure formats utilized in the euro market may be approved to be used. Besides, the language of disclosure of Specified Securities Information is required to either be in Japanese or in English, or in both languages. Foreign issuers do not have to translate their English documents into Japanese. ii. Parties seeking to apply for a bond listing can register the maximum aggregate amount of bonds issued in a program by publishing the "Program Information" pursuant to the rules established the Exchange. Specifically, information on the maximum limit of the outstanding balance and other information shall be described in the Program Information, validity period of which is 1 year (equivalent to Euro medium-term note program). In the case where an issuer publishes the Program Information, such issuer is allowed to prepare the Specified Securities Information only with the remaining information. In the case where the issuer publishes the adequate Specified Securities Information after the registration of Program Information, the listing will be accepted by the Exchange following the submission of an Initial Listing Application and Initial Listing Application Documents including the Specified Securities Information. iii. Under the FIEA, if the Initial Listing Applicant is a continuous disclosure company (a company which is obliged to submit the Annual Securities Report annually), publishing Issuer Filing Information (see 3 b (ii) below for details) is not required. Also, under the rules established by the Exchange, that the disclosure company can omit the corporate information from description in Specified Securities Information, provided that such Specified Securities Information contains a notice that the company submits the Annual Securities Report. **B. Qualification Requirements for Initial Listing Companies:** The Initial Listing Applicant must satisfy all of the requirements listed below when listing bonds on the TOKYO PRO-BOND Market: a. The said bonds obtain a credit rating from a credit rating agency (meaning registered credit rating agencies stipulated in article 2, paragraph 36 of the FIEA and rating agencies established under foreign laws that are subject to frameworks of regulations and supervision equivalent to those of registered credit rating agencies.). A credit rating for the above-mentioned Program Information may be used as the credit rating. b. The securities company that serves as Managing Underwriter for bonds to be listed on the Exchange is required to be registered on the Exchange's Managing Underwriter List. i. Any securities company that wishes to register to appear on the Managing Underwriter List can apply to do so with the Exchange. The Exchange will then decide whether to approve the registration based on consideration of the company's track record in corporate bonds underwriting, etc. The Exchange will also assess the ongoing eligibility of securities companies to be included on the Managing Underwriter List.

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Table 14. continuation

Jurisdiction	Registration and Issuing Approval Procedure
	ii. The requirements for companies registered on the Managing Underwriter List will be different to those for J-Nomads in that they will have no duties to the Exchange in respect of the Qualification Requirements for Initial Listing Companies and no post-listing duties. **C. Approval of Listing:** Once it has confirmed that the Initial Listing Applicant satisfies the Requirements for Initial Listing, the Exchange approves the listing of the bonds and publicly announces it in a timely fashion.
Republic of Korea	**Regulations and Rules and Procedures on Issuing Debt Instruments** 1. Disclosure requirements Article 123 (Preparation and Disclosure of Investment Prospectus), Financial Investment Services and Capital Markets Act (FSCMA): When an issuer publicly offers or sells securities in accordance with article 119, the issuer shall file an investment prospectus (hereinafter referred to as "investment prospectus"), prepared in accordance with the manner prescribed by Presidential Decree, with the Financial Services Commission (FSC) on the day on which the relevant registration statement becomes effective (or the day on which the supplements to a universal shelf registration statement are filed, in cases where the supplements to the universal shelf registration statement shall be field in accordance with article 119[2]) and keep it at a place specified by Ordinance of the Prime Minister to make it available to the public for inspection. <Amended by Act No. 8863, Feb. 29, 2008> No investment prospectus shall contain any description different from the one described in the relevant registration statement (including any supplements to a universal shelf registration statement under Article 119(2); hereafter the same shall apply in this Chapter) or omit any description stated therein: Provided, that a description of the balance between confidentiality in corporate management, etc. and protection of investors, etc., as prescribed further by Presidential Decree. An issuer of the collective investment securities specified by Presidential Decree shall file an additional investment prospectus separately from the one under paragraph (1) in accordance with the following subparagraphs, with the Financial Services Commission (FSC), and shall keep it at a place specified by Ordinance of the Prime Minister to make it available to the public for inspection: Provided, that such filling, keeping, and disclosure may be omitted, if offering or selling such collective investment securities is discounted: <Amended by Act No. 8863, Feb. 29, 2008> A revised investment prospectus shall be filed at least once after the investment prospectus under paragraph (1) is filed within an interval prescribed by Ordinance of the Prime Minister; and In cases where an amendment to registration is filed in accordance with Article 182 (8), an investment prospectus in which such amendment is reflected shall be filed within five days after a notice of amended registration is delivered. [FSCMA, Chapter I in Part III] 2. Credit Rating requirements Regulation11. Underwriting of Non-Guaranteed Bonds In the case of an underwriter underwriting non - guaranteed bonds, such bonds shall be those that have been rated by at least two (one agency, in the case of underwriting ABS issued in the form of bonds pursuant to the Act on ABS or in inevitable cases such as the business suspension of credit rating agencies) credit rating agencies from among those approved for the credit ratings business pursuant to the provisions of the Act on Use and Protection of Credit Information. However, non-guaranteed bonds issued by foreign corporations, etc., shall be deemed as those rated in accordance with this provision if they are rated by two or more credit rating agencies (referring to international credit rating agencies as prescribed by the Governor of the Financial Services Commission (FSC) in Item e of [§2 - 11 (2)1] of the FSC's Regulations on Securities Issuance and Disclosure; the same hereinafter in this chapter). [Chapter III in Regulations on Securities Underwriting Business] 3. Minimum lead time (number of business days) for registration approval Article120 (Effective Date of Registration Statement, etc.) The registration of securities under Article 119(1) and (2) (hereinafter referred to as "securities registration") shall be effective on the day after the expiration of the time period prescribed by Ordinance of the Prime Minister, considering the type of securities or the characteristics of the transaction, etc., which shall begin on the day on which the registration statement is submitted and accepted by the Financial Services Commission. <Amended by Act No. 8863, Feb. 29, 2008> The Financial Services Commission (FSC) shall not refuse to approve a registration statement, unless it is not prepared in conformity with the prescribed form of the registration statement, there is any false description or representation in the registration statement concerning a material fact, or any description or representation of a material fact is omitted. <Amended by Act No. 8863, Feb. 29, 2008> The effectiveness under paragraph (1) shall not include any effect of acknowledging that the descriptions of the relevant registration statement are true or correct, or the Government's assurance or approval of the value of the securities.

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Table 14. continuation

Jurisdiction	Registration and Issuing Approval Procedure
	An issuer of securities shall, when it intends to withdraw its securities registration, file a withdrawal statement with the Financial Service Commission (FSC) no later than the day before the date set for offering to acquire or purchase the securities stated in the relevant registration statement. <Amended by Act No. 8863, Feb. 29, 2008> [FSCMA, Chapter I in Part III] 4. Availability of Shelf Registration and Associated Documentation Requirements If bond issuer uses the shelf registration, bond issuer must submit the "universal shelf registration statement" to the FSC. The legal provision for shelf registration is stipulated at Article 119(2) in FSCMA. Article 119 (Registration of Public Offering and Sale) When a registration statement for a total amount of securities to be publicly offered en bloc over a certain period of time (hereinafter referred to as "universal shelf registration statement") in accordance with the guidelines and methods prescribed by Presidential Decree, considering the type of securities, scheduled issue period, frequency of issuance, requirements for the issuer, etc., is submitted to and accepted accordingly by the Financial Services Commission (FSC), such securities may be publicly offered or sold without necessarily submitting a registration statement each time such securities are publicly offered or sold during the period of time stated therein, notwithstanding paragraph (1). In such cases, the documents related to the universal shelf registration statement (hereinafter referred to as "supplements to universal shelf registration statement"), as prescribed by Presidential Decree, shall be submitted each time such securities (excluding collective investment securities, specified by Presidential Decree) are publicly offered or sold. <Amended by Act No. 8863, Feb. 29, 2008> [FSCMA, Chapter I in Part III] 5. Regulated suspension period The maximum of regulated suspension period is up to six months. The suspension period is imposed by FSS, if some financial investment institutions violate the regulation or the law in FSCMA.
Malaysia	**Regulation of the Corporate Debt Securities and Corporate *Sukuk* Market:** The Securities Commission (SC) administers the *Capital Markets and Services Act 2007*, which governs a substantial part of the activities in the domestic corporate debt securities and corporate *Sukuk* market. On 1 July 2000, the SC became the single regulator for the Malaysian corporate debt securities and corporate *Sukuk* market, and moved towards a full disclosure-based regulatory regime with the issuance of the Guidelines on the Offering of Private Debt Securities. This was followed by the issuance of the Guidelines on the Offering of Islamic Securities. **Related Regulations and Rules on Issuing Debt Instruments:** 1. Bank Negara Malaysia (BNM) manages the liabilities of the government both in Malaysia and abroad. BNM is responsible for trading, registering, settlement and redemption of government securities through the automated trading and settlement system. BNM published the rules on Real Time Electronic Transfer of Funds and Securities and the Fully Automated System for Issuing/Tendering. 2. The SC oversees the issuance of private debt securities, asset-backed securities, Islamic securities, and structured products. 3. For foreign issuers, the Quick Reference for Information on Cross-Border Bond Issuance and Investment contains information on bond issuance by non-residents in Malaysia. 4. Under BNM's Foreign Exchange Administration Policies, proceeds of bond issuances are not to be used for refinancing of offshore borrowing and/or financing of investments abroad exceeding MYR10 million in aggregate in a calendar year.
Philippines	**Regulation of the Philippine Securities Markets:** **Approximate Legislative Framework** The Securities and Exchange Commission (SEC) regulates both primary and secondary debt markets and oversees the Philippine Stock Exchange, the three subsidiaries of the Philippine Dealing Systems Holdings Corporation, brokers, registrars, transfer agents, and clearinghouses. **Related Regulations and Rules** **Disclosure Requirements** Debt securities may not be offered for sale to the public, unless they are registered in accordance with sections 8 and 12 of the *Securities Regulation Code* (SRC), as implemented by SRC Rules 8.1 and 12.1, except those exempt from registration under section 9 (Exempt Securities) and section 10 (Exempt Transactions) of the SRC and SRC Rules 9.2 and 10.1. Likewise, no information relating to the offering of securities shall be disseminated unless a registration statement has been filed with the SEC, along with a preliminary prospectus of the securities intended to be sold and distributed to the public. If the securities which are the subject of the registration statement are intended to be listed in an exchange, a copy of said registration statement and all other pertinent documents shall also be filed with that exchange. The application for the listing shall also be filed with the SEC. Upon filing the registration statement, but before it is rendered effective by the SEC, the registrant may circulate a preliminary prospectus to prospective buyers of the securities. The preliminary prospectus should prominently state that the registration statement pertaining to the securities has been filed but has not yet been approved by the SEC, and that the said prospectus does not constitute an offer to sell or a solicitation of an offer to buy. Both the preliminary and final prospectus shall be worded in plain language understandable to an ordinary person.

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Table 14. continuation

Jurisdiction	Registration and Issuing Approval Procedure
	The registrant should also be able to show that the prospectuses were made readily available to all those who want a copy, in sufficient copies. The sale of securities, which are the subject of the registration statement, shall be commenced within two (2) business days from the effective date of the registration statement and shall be continued until the end of the offering period or until sale has been terminated by action of the issuer. A written notice of completion or termination of the offering shall be filed with the SEC within three (3) business days therefrom, indicating the number of securities sold. If the remaining registered but unsold securities shall be offered after the completion or termination of the sale, an updated registration statement shall be filed with the SEC prior to said offering or sale. **Commercial Papers** The conditions for registration of commercial papers issued by corporations to the public are provided by SRC Rule 12.1, the salient points of which are as follows: (i) Registration statement under SEC Form 12-1 in accordance with SRC Rules 8.1 and 12.1. (ii) Firm commitment underwriting agreement for the commercial paper with a universal bank, investment house, or any other financial institution duly licensed under the Investment Houses Law. (iii) Except for issuance amounting to not more than 25% of the issuer's net worth or where there is an irrevocable committed credit line with a bank covering 100% of the proposed issuance, a commercial paper issue shall be rated by a rating agency accredited by the SEC. The rating requirement shall not apply to issuances amounting to not more than 25% of the issuer's net worth, or where there is an irrevocable committed credit line with a bank covering 100% of the proposed issuance. (iv) Payment of a filing fee, which shall be based on the total amount of commercial papers proposed to be issued and shall be subject to a diminishing fee in accordance with SEC Form 12-1.
Singapore	**Issuing Debt Instruments related regulations/rules:** **1. Disclosure requirements** ***Disclosure requirements for the issuance of debentures*** Under section 243 of the *Securities and Futures Act* (SFA), a prospectus for an offer of securities shall contain all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters relating to the offer and the issuer. The Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 (SFR) sets the specific disclosure requirements for the different types of debentures (including asset-backed securities and structured notes). The SFR also prescribes the disclosure requirements for an offer of debentures under a debenture issuance program. The prospectus for an offer of debentures must normally include terms of the debentures, use of proceeds, identity of directors, capitalization and indebtedness, audited financial statements and interested person transactions. A listed company can make an offer of debentures using an Offer Information Statement, which is a more concise disclosure document, in place of a prospectus. **2. Debenture Issuance Program** Under the SFA, an issuer can make multiple offers of bonds using a debenture issuance program (DIP). The prospectus for an offer of debentures that is part of a debenture issuance program shall comprise a base prospectus applicable to every offer under the DIP, and a pricing statement applicable to a particular offer. The registered base prospectus is valid for 2 years. **3. Stop Order** The Monetary Authority of Singapore (MAS) may, under section 242 of the SFA, serve a stop order on a person making an offer of securities that no or no further securities be allotted, issued or sold. The MAS may do so if a prospectus has been registered and: (a) the MAS is of the opinion that the prospectus contains a false or misleading statement; (b) there is an omission from the prospectus of any information that is required to be included in it; (c) the MAS is of the opinion that the prospectus does not comply with the requirements of the SFA; or (d) The MAS is of the opinion that is in the public interest to do so. The MAS may also serve an interim stop order on the person making the offer. If the interim stop order is served during a hearing, or a hearing commenced while the stop order is in force, the interim stop order will remain in force until the MAS serves a stop order. Otherwise, if there is no hearing, the interim stop order will be in force for a period of 14 days, unless it is revoked by the MAS.
Thailand	**Securities Issuance Rules in Brief:** **1. Approval for Securities Offering** The *Securities and Exchange Commission Act (SEC Act) B.E. 2535* (1992) Chapter 2 Issuance of Securities Division 1 Approval for the Offering of Newly Issued Securities (Sections 32-38) Division 2 Debentures (Sections 39-40) Division 3 Issuance of Secured Debentures (Sections 41-49)

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Jurisdiction	Registration and Issuing Approval Procedure
	Division 4 Register and Transferability (Sections 50-55) Division 5 Disclosure of Information and Auditor (Sections 56-62) Chapter 3 Public Offering of Securities (Sections 63-89) Division 4 Listed Securities (Sections 189-200) Chapter 6 Over-the-Counter Centre and Futures and Options Centre Division 1 Over-the-Counter Centre (Sections 204-217) Chapter 7 Institutions Related to Securities Business Division 1 Clearing House, Securities Depository Centre and Securities Registrar (Sections 219-229) The SEC Act B.E. 2535 (1992) prohibits companies from offering newly issued shares and other securities for sale without prior approval from the SEC in compliance with the rules and regulations issued by the SEC Board except for the rights offering to existing shareholders. This provision allows the SEC to put in place rules and regulations and consider the merits of the securities to be offered. Securities offering can be classified by types of securities as follows: (i) Shares (ii) Derivative warrants (iii) Debt Securities (iv) Overseas Debentures (v) Warrants (vi) Securitization (vii) Securities Issuance and Offering by Foreign Issuer (viii).Foreign exchange bond (ix) *Sukuk* **Private placement of debt securities exempt from SEC filing for registration:** Private placement of debt securities which is exempt from SEC filing for registration is defined in the following Notification. *Notification of the Capital Market Supervisory Board No.TorChor.9/2552* (2009) Re: Application for and Approval of Offer for Sale of Newly Issued Debt Securities **2. Disclosure of Information** In offering newly issued securities for sale, companies shall apply for an approval from the SEC and disclose information to the investing public for decision making. However, the offering of existing securities by its holders can be done without SEC approval on the condition that the offerors shall disclose information prior to offering securities for sale. Before offering securities to the public, the offerors, who may be companies or existing shareholders, shall file a registration statement and a draft prospectus to the SEC to give investors time to study such information. However, some types of securities offering are not required to file such documents if the offering does not affect the general public. The offering of securities for sale is allowed upon: (i) The SEC approval in case of newly issued shares; and (ii) The effectiveness of the registration filing. During the filing process, information shall be disclosed with discretion and within the limit of permitted scope. **3. Post-Offering Duties** After offering securities for sale to the public, companies shall undertake securities settlement with the holders in accordance with the SEC regulations and disclose information on a continual basis to give investors information for making investment decision. Information of securities subject to public disclosure includes: (i) Report of securities selling (ii) Report of rights exercising on convertible securities, i.e., warrants and convertible debentures (iii) Report of financial condition and operational performance, consisting of financial statements and annual reports (Form 56-1 and 56-2) (iv) Report of securities holding of the issuing company management **4. Regulatory transaction reporting requirements** The SEC stipulates that all licensed dealers must report transactions of each bond to the Thai Bond Market Association (ThaiBMA) within 30 minutes after trade. Practically, trades are submitted to ThaiBMA within 15 minutes on average. All reports are scrutinized by the Monitoring and Surveillance department to ensure accuracy and integrity prior to compilation and dissemination to the general public and for the mark-to-market purpose.

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Table 14. continuation

<table>
<tr><th>Jurisdiction</th><th>Registration and Issuing Approval Procedure</th></tr>
<tr><td></td><td>
Filing and Approval criteria:
1. Plain debt
(✓: means 'Yes,' 'exists' or 'required')
<table>
<tr><th>Filing</th><th></th></tr>
<tr><td>1. Public Offering (PO)</td><td>✓: Requires filing to SEC</td></tr>
<tr><td>2. Non Retail Investor (NRI)</td><td>✓: Requires filing to SEC
Min. disclosure</td></tr>
<tr><td>3. Exempt</td><td>< 10 persons
Treasury bill (T-bill), Government bond, Ministry of Finance (MOF) bond, Bank of Thailand (BOT) bond</td></tr>
</table>
2. Complex debt
(✓: means 'Yes,' 'exists' or 'required')
<table>
<tr><th>Filing</th><th></th></tr>
<tr><td>1. PO</td><td>✓: Requires filing to SEC</td></tr>
<tr><td>2. NRI</td><td>✓: Requires filing to SEC
Min. disclosure</td></tr>
<tr><td>3. Exempt</td><td>< 10 persons
T-bill, Government bond, MOF bond, BOT bond</td></tr>
</table>
<table>
<tr><th>SEC Approval Criteria</th><th>Thailand</th></tr>
<tr><td>1. Plain Debt</td><td></td></tr>
<tr><td>1.1 PO</td><td>✓: Requires SEC approval</td></tr>
<tr><td>1.1.1 Eligible entities</td><td>Local company and foreign company[a]</td></tr>
<tr><td>1.1.2 Others</td><td><u>Local Issuer</u>
Both bond and foreign exchange bond:
1. Never breach to offering rule
2. Qualified executive w/o prohibited qualification
3. Disclose the latest annual and quarter financial statement
4. Rated by accepted credit rating agency (CRA)
5. Register with ThaiBMA
6. Foreign exchange bond: issuer required approval from BOT in relation to foreign exchange control (additional)
<u>Foreign Issuer</u>
Baht bond: approval from MOF
Foreign exchange bond:
a. Never breach to offering rule
b. Disclose financial status (IFRS/FAS/US GAAP/other acceptable standard)
c. Contract person in Thailand
d. Offering debt in Thailand is not beach the issuance's country law
e. IOSCO-signatory A
f. Issuer requires approval from BOT in relation to foreign exchange control</td></tr>
<tr><td>1.2 NRI</td><td>✓: Approval in general easier</td></tr>
<tr><td>1.2.1 Eligible entities</td><td>Local company & foreign company</td></tr>
<tr><td>1.2.2 Others</td><td>a. Limited transferability
b. Rated by accepted CRA
c. Register with Thai Bond Market Association
(< 10 persons, issuer is not required to comply with 2. and 3.)</td></tr>
<tr><td>2. Complex</td><td></td></tr>
<tr><td>2.1 Underlying</td><td>Local securities, local/foreign securities index, currency, gold, cash in/out flow, credit link, credit default</td></tr>
</table>
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Table 14. continuation

Jurisdiction	Registration and Issuing Approval Procedure

SEC Approval Criteria	Thailand
2.2 PO	✓: Requires approval from SEC
2.2.1 Eligible entities	Local company (a) Derivatives dealer (b) Commercial bank (underlying = gold, foreign exchange) (c) Cash inflow/outflow or main business are related to the reference underlying
2.2.2 Others	1. Never breach to offering rule 2. Qualified executive w/o prohibited qualification 3. Disclose the latest annual and quarter financial statement 4. Rated by accepted CRA 5. Register with Thai Bond Market Association 6. Redeemed value > 80% of par value 7. Issuer is not a related party of the underlying company
2.3 NRI	✓: Requires approval from SEC
2.3.1 Eligible entities	Local company – Derivatives dealer
2.3.2 Others	1. Limited transferability 2. Rated by accepted CRA 3. Register with Thai Bond Market Association (< 10 persons, issuer is not required to comply with 2. and 3.)

3. Are the following regimes in place in jurisdiction?

	YES	NO
Private Placement Regime	X	
Institutional Offerings Regime	X	
Integrated Disclosure Regimeb (including continuous disclosure)	X	
Shelf Registration Regime	X	

4. Minimum lead time (number of business days) for registration approval

	TIME PERIOD (MONTHS)
How long is the time period set which the regulator has to approve or disapprove the prospectus?	Offering corporate bond to Institutional Investor (II) and high net worth investor (HNWI) effective within the next business day as from the date of filing prospectus in full. Offering Corporate Bond to the Public (Public Offering) effective after the end of the 14-day period from the day the office receives prospectus in full.
How long in average is the prospectus reviewing period in your jurisdiction? (From the time of application until the approval/ disapproval by the regulator)	About 20–30 days.

5. Summary of regulation for issuing and offering of corporate bonds

Corporate bond offering regulations can be summarized as follows;

	Private Placement (PP)		Public Offering (PO)
	PP (Narrow Distribution/Small Size/Short term)	PP (II and HNWI)	
Distribution	Narrow Distribution 1. < 10 person or 2.For debt restructuring or 3. Overseas institutional investors 4. Convertible bond sold to the existing shareholders or 5. Total number of the bill issued are less than ten	II and HNWI	General investors including individuals

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Table 14. continuation

<table>
<tr><th>Jurisdiction</th><th>Registration and Issuing Approval Procedure</th></tr>
<tr><td></td><td>
<table>
<tr><td></td><td colspan="2">Private Placement (PP)</td><td>Public Offering (PO)</td></tr>
<tr><td></td><td>PP (Narrow Distribution/Small Size/Short term)</td><td>PP (II and HNWI)</td><td></td></tr>
<tr><td>Issue size
(Stock Exchange of Thailand Rule for Listing Qualification)</td><td>In case of small (less than THB100 million), cannot be listed (Unlisted)</td><td>Not less than THB100 million - can be listed.</td><td>Not less than THB100 million - can be listed</td></tr>
<tr><td>Short term bills</td><td>SEC Filing Not required (Exempt)</td><td>Require filing to SEC</td><td></td></tr>
<tr><td>SEC Filing of the registration statement and draft prospectus</td><td>SEC Filing Not required (Exempt)</td><td>SEC Filing Required but Light (Free form, 1-day processing)

Notification of the Capital Market Supervisory Board No. TorChor.10/2552 clause 18 (1) (please see the attachment file)</td><td>SEC Filing Required (full form, full process)</td></tr>
<tr><td>Continuous Disclosure requirement</td><td>Not required (Exempt)</td><td>Require same disclosure at the same time that send to lead regulator</td><td>An annual report is required to be filed with the SEC.</td></tr>
<tr><td>Rating</td><td>Not required (Exempt)</td><td>Required, but
Issue, Issuer, Guarantor rating (any can be used)</td><td>Required.
Long-term: issue/ guarantor rating
Short-term: issue/ issuer/ guarantor rating</td></tr>
<tr><td>ThaiBMA registration</td><td>Not required (Exempt)</td><td>Required (newly issued bond)</td><td>Required (newly issued bond)</td></tr>
<tr><td>Bond representative</td><td>Not required (Exempt)</td><td>Not required (Exempt)</td><td>Required</td></tr>
</table>
a. The bond can be offered for sale by way of PO or PP. PP generally means to offer for sale to institutional investors, high net worth investors, and specific investors.
b. Approval from the SEC is required for the offer for sale by way of a Public Offering. A full filing form (a specific form prescribed by the SEC) and draft prospectus have to be submitted to the SEC.
c. PP (Narrow Distribution/Small Size) is exempt from filing requirement.
d. PP (II and HNWI) is exempt from full filing requirement. (Light requirement remains).
e. The concept of II or Qualified Foreign Institutional Investor (QFII) does not only apply to securities available for sale in the Exchange Market but also applies to debentures issued by way of private placement.
f. A credit rating is also required for an offer for sale by way of a PO and PP.
g. The newly issued bond must be registered with the ThaiBMA.
h. A bond representative is needed for an offer for sale by way of a PO.
i. An annual report is required to be filed with the SEC.</td></tr>
<tr><td>Viet Nam</td><td>A key legislation regulating securities and the securities market is the Securities Law 2006 (No. 70/2006/QH11), which took effect on 1 January 2007.
The scope of the law covers the public offers of securities, listing and trading securities, conducting business and investing in securities, securities services and the securities market.
Issue authorization and disclosure duties for public offering bonds are as follows: After registration, actual (corporate) bond issues should obtain the State Securities Commission's (SSC) authorization for issuance of bonds with a set of disclosure information.
1. Conditions for Offering Bonds to the Public
a. The enterprise must have its paid-up charter capital at the time of registration for public offering of at least VND10 billion in book value;
b. Being profit making in the year preceding the year of such registration for offering, it must have no accumulated losses up to the year of registration for offering or overdue debts of over 1 year.
c. It must have a plan for offering and use and refund of capital received from the offering approved by the Board of Management, Board of Members, or the enterprise's owner.
d. It must commit to fulfill obligations of the issuer towards investors, meet conditions for issuance and payment, and ensure investors' legitimate rights and interests, and other conditions.</td></tr>
</table>

continued on next page

Table 14. continuation

Jurisdiction	Registration and Issuing Approval Procedure
	2. Condition for Offering Securities to the Public, Overseas, and Other Specific Cases The government shall stipulate the conditions for offering securities to the public applicable to state-owned enterprises (SOEs); foreign-invested enterprises (FIEs), which are transformed into joint stock companies; and newly established enterprises in the fields of infrastructure or high technology. It shall also set out the conditions for offering securities overseas and other specific cases. 3. Registration of Offering Securities to the Public a. The issuer carrying out the offering of securities to the public shall have to register with the SSC. b. The following cases shall not be subject to registration for offering securities to the public: i. Offering of bonds of the Vietnamese Government; ii. Offering of international financial institutions' bonds accepted by the Vietnamese Government; iii. Offering of shares to the public by SOEs, which are transformed into joint stock companies; and iv. The sale of securities upon a court judgment or decision, or the sale of securities by the managers or the persons entitled to assets in case of bankruptcy or insolvency. 4. Information prior to Public Securities Offering At time the SSC reviews the public securities offering registration dossier, the issuer, the underwriter(s), and other relevant organizations and individuals may only use, in an honest and accurate manner, the information described in the prospectus submitted to the SSC to explore the market, provided that they shall clearly specify that the information on the date of issue and the securities selling price is the proposed information. Exploring the markets must not be conducted through the mass media. 5. Effectiveness of the Public Securities Offering Registration a. Within 30 days from the date of receipt of the valid dossier, the SSC shall examine and grant the Certificate for Public Securities Offering. In case of refusal, it must respond in writing and clarify the reasons thereof. b. The Certificate for Public Securities Offering granted by the SSC shall be a document certifying that the public securities offering registration dossier fully satisfies the conditions and procedures provided by law. c. Within 7 days from the date the Certificate for Public Securities Offering comes into effect, the issuer shall publish the Announcement of Offering in three consecutive issues of one electronic newspaper or written newspaper. d. The securities shall only be offered to the public after the announcement has been made, as stipulated in clause 3 of this Article.

[a] Baht bond: International financial institution or foreign government or multinational corporation in ASEAN+3 countries.
[b] An integrated disclosure regime which allows the issuer to incorporate by reference continuous disclosure documents into its public offering documents, thereby easing the disclosure burden of public offerings. It allows the qualified issuer to file disclosure documents for a new public offer by incorporating continuous disclosure documents by reference and minimizes the redundancies.
FAS = Financial Accounting Standards; IFRS = International Financial Reporting Standards; IOSCO = International Organization of Securities Commission; US GAAP = US Generally Accepted Accounting Principles
Source: ADB Consultants, based on research materials and market visit information.

XV. Necessity of Disclosure of Ultimate Beneficial Owner

Table 15. Necessity of Disclosure of Ultimate Beneficial Owner

Jurisdiction	Regulators' Policy related to the Necessity of Disclosure of Ultimate Beneficial Owner	Direct or Indirect Account Holding System
People's Republic of China	Yes. Beneficial Owner to be disclosed	
Hong Kong, China	No policy	Both
Indonesia	No requirement by law. Typically grouped by tax rate/domicile.	Both
Japan	No policy	Direct (Account holders have the rights directly against issuers)
Republic of Korea	No policy	Direct
Malaysia	No policy	Both
Philippines	No policy	Registered holders have legal rights against the Issuer.
Singapore	No policy	Both
Thailand	No policy	Both
Viet Nam	No policy	Indirect

Source: ADB Consultants, based on research materials and market visit information.

XVI. Foreign Exchange and Currency-Related Restrictions

Table 16. Foreign Exchange and Currency-Related Restrictions

Jurisdiction	Foreign Exchange Rate Floating	Restrictions on Foreign Remittance (1. Own currency) (2. Investment principal) (3. Coupons/dividends)	Currencies eligible for Continuous Linked Settlement Bank Settlement
People's Republic of China	Government controlled floating, rate referring to currency basket	1. Restricted	-
		2. Restricted for certain period of time after investment	
		3. Restricted for certain period of time after investment	
Hong Kong, China	Link to US dollar (Currency Board System)	1. No restriction	Yes
		2. No restriction	
		3. No restriction	
Indonesia	Floating	1. Restricted. (Rupiahs foreign-exchange trades must be done by Indonesian domestic banks, rupiah remittance between foreign banks is prohibited)	-
		2. No Reporting required for repatriation of benefits.	
		3. Reporting required	
		(*) Real-demand principle applies to inbound foreign exchange or buy Indonesian rupiah only.	
Japan	Floating	1. No restriction	Yes
		2. No restriction. (ex post facto report required)	
		3. No restriction. (ex post facto report required)	
Republic of Korea	Floating	1. Restricted	Yes
		2. No restriction	
		3. No restriction	
Malaysia	Managed float against a basket of currencies, following the de-pegging of the ringgit	1. Restricted (All remittance out of the country must be made in foreign currency). Real-demand principle applies to inbound foreign exchange only.	-
		2. No restriction for non-resident investors to repatriate in foreign currency.	
		3. No restriction for non-resident investors to repatriate in foreign currency.	
Philippines	Floating	1. Restricted. Registration with Bangko Sentral ng Pilipinas (BSP) for issuance of Bangko Sentral Registration Document (BSRD) on per transaction basis is required to qualify for automatic conversion of peso sale/interest into foreign exchange for outward repatriation.	-
		2. Registration with BSP for issuance of BSRD on per transaction basis is required to qualify for automatic conversion of peso sale/interest into foreign exchange for outward repatriation.	
		3. Interest automatically qualifies for outward repatriation if principal investment has BSRD.	
Singapore	Floating against basket of currencies	1. No restrictions (investor can hold Singapore dollar in, e.g., Tokyo)	Yes
		2. No restriction	
		3. No restriction	
Thailand	Managed Floating	1. Restricted	-
		2. Reporting is required.	
		3. Reporting is required.	
Viet Nam	Controlled Floating	1. Restricted	-
		2. Restricted for certain period of time after investment	
		3. No restriction	
		(Viet Nam issue is based on availability of foreign currency.)	

Source: ADB Consultants, based on research materials and market visit information.

XVII. Omnibus Securities Account and Nominee Concept

Table 17. Omnibus Securities Account and Nominee Concept

Jurisdiction	Existence of Omnibus Securities Account	Existence of Nominee Concept
People's Republic of China	No. Securities must be kept in the name of the beneficiary owner.	No.
Hong Kong, China	Yes.	Yes.
Indonesia	Yes.	Yes.
Japan	Yes.	Yes.
Republic of Korea	Yes. But, the foreign exchange regulation in Korea does not allow omnibus accounts for payments for foreign investors. To avoid this, foreign investors who use international central securities depositories (ICSDs) have the status of a Qualified Financial Intermediary (QFI) and are allowed to use omnibus accounts. (See details below).	Yes. But it cannot be applied to foreign investment in bonds.
	Foreigners who invest in Korean domestic bonds normally depend on local or global custodians to settle their transactions and keep the bonds they have acquired. In making settlement for securities transactions, custodians usually use omnibus accounts through which they consolidate all of their clients' transactions into a single account and make payments and deliveries using that account. The foreign exchange regulation in Korea, however, requires that payments to settle securities transactions by foreigners must be processed through the individual account of each foreign investor. Since omnibus accounts for payments are not allowed for foreign investors, the custodian banks in charge of settling the bond transactions of foreign investors have to make payments through the individual account of each foreign investor. Prior to 2007, ICSDs did not provide settlement service for Korean bonds because the use of omnibus accounts by foreign investors was prohibited. As a consequence, it is plausible that Republic of Korea may have been losing potential foreign investments from those who would have invested in Korean bonds had they been able to settle their transactions through ICSDs. To address this shortcoming, the Korean government allowed ICSDs to use omnibus accounts to settle transactions of domestic bonds by foreign investors. The revised regulation stipulates that Clearstream and Euroclear can provide settlement services for the country's government bonds and Monetary Stabilization Bonds (MSBs) through their omnibus accounts set up at the Korea Securities Depository. Allowing omnibus accounts not only provides foreign investors with the benefit of lower cost and convenience in settlement, but also enables them to avoid significant institutional impediments. First, foreign investors do not have to register with the Financial Supervisory Service and get an investment registration certificate in advance if they settle their transactions of Korean domestic bonds through an ICSD. They can simply hold Korean domestic bonds at the representative omnibus account under the title of an ICSD. In addition, the new regulation enables over-the-counter (OTC) transactions of Korean domestic bonds when these are deposited in and settled through the omnibus accounts of an ICSD. As a result, a foreign investor may now sell Korean government bonds to another foreign investor through a direct OTC transaction when both parties engage in the transaction via financial institutions that have settlement accounts at an ICSD. Allowing ICSDs to make settlements using a representative omnibus account, however, may cause some problems in relation to the income tax exemption for foreigners. As was mentioned earlier, the Korean government decided to give foreign investors exemption from withholding tax on interest income from government bonds and MSBs in January 2009. Since foreign investors no longer need an investment registration certificate if they settle their transactions through the omnibus account of an ICSD, a domestic investor can easily disguise himself as a foreign investor by making settlement through an ICSD to gain a tax exemption on interest income. Under this system, the settling members of ICSDs that acquire QFI status are allowed to make settlement of Korean domestic bond transactions for their customers through the omnibus accounts of ICSDs. In order to qualify as a QFI, a financial institution is required to assess customer adequacy of foreign investors for tax exemption and keep track of the bond transactions and holding records of foreign investors so that they can report to Korea's National Tax Service as necessary. In spite of the clear benefits, the use of omnibus accounts is an exception rather than a rule. It is only the ICSDs that are allowed to use omnibus accounts. Therefore, foreign investors who do not settle their domestic bond transactions through ICSDs are still subject to restrictions such as registration requirements, prohibition of direct OTC transactions between foreign investors, and prohibition on the use of omnibus accounts.	
Malaysia	Yes.	Yes.
Philippines	Yes.	Yes.
Singapore	Yes.	Yes.
Thailand	Yes.	Yes.
Viet Nam	Yes.	No.

Source: ADB Consultants, based on research materials and market visit information.

XVIII. Main Trading Places (Over the Counter or Exchange) and Existence of Exchange trading

Table 18. Main Trading Places (Over the Counter or Exchange) and Existence of Exchange Trading

Jurisdiction	Is the Over-the-Counter Market a Main Trading Place?	Exchange Market Trading
People's Republic of China	Yes, Inter-bank Bond Market, not directly available to foreign investors. Domestic institutions are permitted to trade in the over-the-counter (OTC) market.	Yes (Shanghai Stock Exchange and Shenzhen Stock Exchange).
Hong Kong, China	Yes	Yes (Hong Kong Stock Exchanges and Clearing), but only accounts for a relatively small portion of all the trading in bonds.
Indonesia	Yes	Possible, but hardly observed.
Japan	Yes	No.
Republic of Korea	Yes	Yes (Korea Exchange). Government Bonds.
Malaysia	Yes (Only for unlisted debt securities)	No.
Philippines	Yes	No.
Singapore	Yes	Yes. (Government Bonds, mainly for retail investors, 2011-)
Thailand	Yes. Bond Electronic Exchange provides electronic platform for OTC fixed-income trading named Fixed-Income and Related Securities Trading System.	No.
Viet Nam	Yes, but not yet regulated.	No.

Source: ADB Consultants, based on research materials and market visit information.

XIX. Listing of Bonds and Obligation for Market Listing (Domestic Market)

Table 19. Listing of Bonds and Obligation for Market Listing (Domestic Market)

Jurisdiction	Name of Exchange	Obligation for Market Listing	Purpose of the Listing
People's Republic of China	Shanghai Stock Exchange and Shenzhen Stock Exchange	Yes for Exchange Market. No for Inter-bank Bond Market.	Profiling and real listing for trading
Hong Kong, China	The Stock Exchange of Hong Kong	No.	Profiling, regulatory and price discovery purposes
Indonesia	Indonesia Stock Exchange	No.	Profiling
Japan	Tokyo Stock Exchange TOKYO AIM (TOKYO PRO-BOND Market)	No.	Profiling
Republic of Korea	Korea Exchange	No.	Profiling
Malaysia	Bursa Malaysia	No.	Profiling
Philippines	Philippine Dealing and Exchange for onshore trading of fixed-income securities.	No.	Profiling
Singapore	Singapore Exchange Securities Trading: listed fixed income Inter-bank money market: Unlisted fixed income	No.	Profiling/Trading
Thailand	Bond Electronic Exchange	No.	Profiling
Viet Nam	Ho Chi Minh Stock Exchange Hanoi Stock Exchange	Yes.	Profiling

Source: ADB Consultants, based on research materials and market visit information.

XX. Necessity of Credit Rating for the Issuing of Bonds

Table 20. Necessity of Credit Rating for the Issuing of Bonds

Jurisdiction	Obligation to acquire rating at the issuance of the bond	Remarks
People's Republic of China	Yes.	All the issues are rated AAA. There is no accumulation of default data, hence difficult to diversify the issuance.
Hong Kong, China	No.	There are no credit rating agencies (CRAs) based exclusively in Hong Kong. However, the three largest international CRAs have offices in this jurisdiction, alongside several smaller multinational CRAs. In view of the revised Code of Conduct Fundamentals for Credit Rating Agencies issued by the International Organization of Securities Commissions in May 2008 and the Declaration on Strengthening the Financial System made by the Group of Twenty on 2 April 2009, the Securities and Futures Commission (SFC) is proposing to introduce a regulatory framework to strengthen its oversight of CRAs. Refer to the Consultation Paper and Consultation Conclusions Concerning the Regulatory Oversight of Credit Rating Agencies, which are published in the SFC's website.
Indonesia	Yes.	Issuer who will issue debit security or bond (efek bersifat utang, EBU) should obtain rating of referred EBU from a CRA, based on Peraturan Bapepam dan LK nomor IX.C.11: Pemeringkatan EBU, who is holding a business license from Bapepam-LK based on Peraturan Nomor V.C.2: Perizinan Perusahaan Pemeringkat Efek. Rating is an opinion from CRA concerning the ability of parties who are rated to meet payment obligations in a timely manner (company rating) and/or related to the securities issued by referred parties (instrument rating). Ratings could be done to: a. EBU, Sukuk, Asset-Backed Securities or other rated securities; b. Party as an entity, including Mutual Funds and Real Estate Investment Trust in form of a Collective Investment Contract. PT ICRA Indonesia, PT Pemeringkat Efek Indonesia and PT Fitch Ratings Indonesia are the existing CRAs in Indonesia. Indonesia is the only jurisdiction that imposes rating requirements for bonds seeking listing status.
Japan	No. But, TOKYO PRO-BOND Market Listing requires Credit Rating	Credit rating was introduced in Japan in the 1980s, and it has become general practice in issuing of and investing in corporate bonds. In Japan, bonds with a credit rating of BB, B, CCC, CC, or C, which are called "junk bonds" or "high yield bonds," did originally not exist in the primary market because of a policy that excluded bonds that did not meet the eligibility standards established by the market participants. However, today there are no such regulations because the eligibility standards were abolished in 1996. Nevertheless, few BBB-rated bonds, let alone junk bonds, have been offered in the market. Qualification Requirements for Initial Listing Companies on the TOKYO PRO-BOND Market: The Initial Listing Applicant must satisfy all of the requirements listed below when listing bonds on the TOKYO PRO-BOND Market: The said bonds obtain a credit rating from a credit rating agency (meaning registered credit rating agencies stipulated in Article 2, Paragraph 36, of the Financial Instruments and Exchange Act and rating agencies established under foreign laws that are subject to frameworks of regulations and supervision equivalent to those of registered credit rating agencies.). A credit rating for the above-mentioned Program Information may be used as the credit rating.
Republic of Korea	Yes.	When a company issues corporate bonds in order to raise long term capital for over one year from the direct financing market, they are required to obtain a credit rating from a specialized credit rating agency for all non-guaranteed bonds in order to protect small-cap investors who lack professional knowledge on the issuer, and in order to induce a reasonable price in the bond market. All non-guaranteed corporate bonds, excluding government bonds and bonds, for which the government has guaranteed the payment of principal and interest, as well as municipal bonds and monetary stabilization bonds issued by the Bank of Korea, must receive a credit rating in order to be included in the trust assets of banks and investment trust companies. In other words, bonds being issued without guarantee including those by ordinary companies, specialized lenders, financial investment firms, commercial banks, the Korea Development Bank, government-funded agencies and pension funds, must first receive a credit assessment from a specialized credit rating agency. Corporate bonds' credit ratings are used as criteria for deciding upon investment when issuing and trading non-guaranteed bonds.

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Table 20. continuation

Jurisdiction	Obligation to acquire rating at the issuance of the bond	Remarks
Malaysia	Yes.	In Malaysia, all debt securities and *Sukuk* issues are required to be accompanied by a credit rating at all times. Private Debt Securities Guidelines (Extract) Revised: 12 July 2011/Effective: 12 August 2011 Securities Commission (SC) Deemed approval process for ringgit-denominated private debt securities 5.03 Notwithstanding paragraph 5.01, a proposed issue, offer or invitation of ringgit-denominated private debt securities (including a debt program) will be deemed approved by the SC upon fulfilling the following conditions: (a) The issue, offer or invitation has either (i) been assigned a local rating of AAA by a domestic credit rating agency registered with the SC or, (ii) subject to the requirements stated in paragraph 5.04, been assigned an international rating of at least BBB- (or its equivalent) or a regional rating of AAA by an international credit rating agency;
Philippines	Yes.	As a general rule under Securities Regulation Code Rule 12.1-6, all commercial papers or evidences of indebtedness are required to be rated by a rating agency accredited by the Securities and Exchange Commission, except: (1) Government and government-guaranteed debt securities; or (2) Issuance amounting to not more than 25% of the issuer's net worth; or (3) Where there is an irrevocable committed credit line with a bank covering 100% of the proposed issuance.
Singapore	No. But, As a foreign debt securities listing requirement of Singapore Exchange (SGX), the issue of debt securities must have a credit rating of investment grade and above.	Singapore does not have any home-grown credit rating agencies, but instead relies on international rating services. As a foreign debt securities listing requirement of SGX, the issue of debt securities must have a credit rating of investment grade and above. The same requirements apply for the listing of local debt securities, with the additional requirement that for the Issuer qualifying under the listing requirements, the issue of debt securities must have a principal amount of at least SGD750,000. Credit Rating requirements: Under the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005, where the issuer or the bonds being offered have been given a credit rating by a credit rating agency, the following should be disclosed in the prospectus: (a) The name of the CRA; (b) The credit rating (including whether it is a short-term or long-term credit rating); (c) Whether or not the relevant entity, its guarantor entity or any of their related parties had paid any fee or benefit of any kind to the CRA in consideration for the credit rating; and (d) The date on which the credit rating was given.
Thailand	Yes.	According to the Securities and Exchange regulations, newly issued debentures to public offering (PO) issues must have a credit rating from an authorized credit rating agency. Most private placement (PP) issues are also required to have a credit rating but on the basis of more relaxed regulation. To elaborate on this, PO issues need to have issue ratings; PP issues can choose to have either issue or issuer ratings; PP with limited distribution (i.e., fewer than 10 investors) is exempted from ratings.
Viet Nam	No.	Currently, there is no domestic credit rating agency in this country. Global rating agencies such as Standard & Poor's (S&P), Moody's Investor Service, Fitch Ratings, and Rating and Investment Information (R&I) have assigned credit ratings for Viet Nam. Viet Nam's first credit rating agency, Viet Namnet Credit Ratings Centre, opened in June 2005, but discontinued its operations after less than 1 year.

Source: ADB Consultants, based on research materials and market visit information

XXI. Documentation Language

Table 21 Documentation Language

Jurisdiction	Main language	Alternative language
People's Republic of China	Chinese	
Hong Kong, China	English	Chinese
Indonesia	Bahasa Indonesia	English

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Table 21. continuation

Jurisdiction	Main language	Alternative language
Japan	Japan*	English for TOKYO-PRO BOND Market Listing
Republic of Korea	Korean (Hangul)	
Malaysia	English	
Philippines	English	
Singapore	English	
Thailand	Thai	English
Viet Nam	Vietnamese	

* Japan is in the process of introducing a partial English-based documentation for disclosure from April 2012; Although the information for securities should be submitted in Japanese, most disclosure information for the issuer (including already disclosed reference information) can be submitted in English, except for some specific information. Non-resident issuers' burden will, thus, be reduced.
Source: ADB Consultants, based on research materials and market visit information.

XXII. Concept/Definition of Professional or Institutional investors

Table 22. Concept and Definition of Professional or Institutional investors

Jurisdiction	Concept and Definition of Professional or Institutional investors	Remarks
China	• No concept or definition of 'professional' (investor) evident in Chinese law. • Professional is often taken synonymous to 'experienced.'	• The People's Bank of China is considering the concept of Qualified Institutional Buyer (QIB), i.e., a professional investor category, with related disclosure and even potentially specific instruments for this investor category.
	The Inter-bank Bond Market is the over-the-counter (OTC) market for institutional investors. Investment bodies include all types of institutional investors such as commercial banks, insurance companies, securities companies, funds management companies, enterprises and public institutions. At present, the Inter-bank Bond Market has over 10,000 members, covering all types of financial institutions such as commercial banks, securities companies, insurance companies, and various kinds of investment products like mutual funds and pension funds, among which commercial banks are the most active participants.	
Hong Kong, China	• A "professional investor" includes any authorized financial institution, any recognized exchange company, recognized clearing house, any authorized insurer, any investment services intermediary, collective investment scheme, any government institution that performs the functions of a central bank, and any person of a class which is prescribed by rules under section 397 of the SFO (section 1 of Part 1 of Schedule 1 to the SFO). • An offer to sell bonds to professional investors is not required to comply with the prospectus requirements in the Companies Ordinance (CO) as stipulated in the Exemption in Paragraph 1 of Schedule 17 to the CO. This is contrasted with a general offer of bonds to the public, which has to comply with a prospectus requirements in the CO.	
Indonesia	Indonesia does not have specific definitions on this type of professional investors.	Bapepam-LK is working on definitions of professional/ individual investors.
Japan	1. The following categories are **specified (professional) investors**. a. Qualified Institutional Investors (meaning persons specified by a Cabinet Office Ordinance as those having expert knowledge of and experience with investment in Securities); b. The State (Japan); c. The Bank of Japan; and d. Investor Protection Funds, and other juridical persons specified by a Cabinet Office Ordinance (excluding those that are deemed to be non-specified investors according to agreements (opt-out)). Corporations and individuals that are deemed to be specified investors according to agreements (opt-in).[a] **2. Qualified Institutional Investors (QIIs)** QIIs include securities companies, investment management companies, investment corporations, foreign investment corporations, banks, insurance companies, certain pension funds, general partners of certain partnerships. Juridical persons referred to companies whose shares are listed on stock exchange(s) in Japan, companies whose stated capital is likely to be JPY500 million or more and foreign corporations.	

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Table 22. continuation

<table>
<tr><th>Jurisdiction</th><th>Concept and Definition of
Professional or Institutional investors</th><th>Remarks</th></tr>
<tr><td>Republic of Korea</td><td colspan="2">The Financial Investment Service and Capital Market Act (FSCMA) classifies an ordinary investor and a professional investor based on the expertise of their professional knowledge and experience as well as the amount of assets.
A professional investor refers to an investor who does not need any strong investor protection measures considering its own expertise and experience, such as a nation, a local municipality, a central bank, and a financial institution. Most individual investors fall under the classification of an ordinary investor with the exception of an investor whose financial investments exceeds KRW5 billion. Such classification aims to protect ordinary investors from taking huge risks in making investment due to the lack of such understanding of the financial investment instruments.
Professional investors are;
a. The State;
b. The Bank of Korea;
c. Financial institutions specified by Presidential Decree; ref. Enforcement Decree of FSCMA article 10 (Scope of Professional Investors)
d. Stock-listed corporations: Provided, That trading OTC derivatives with a financial investment business entity shall be limited to cases where an investor notifies the financial investment business entity in writing of its willingness to be treated as a professional investor; and
e. Other persons specified by Presidential Decree.
In May 2012, Republic of Korea will launch a QIB market which is based on an exempt regime for Professional Investors.</td></tr>
<tr><td>Malaysia</td><td colspan="2">The term - Sophisticated Investor is not explicitly defined in the Capital Markets and Services Act 2007 (CMSA). However, Schedules 6 and 7 of the CMSA exempt these types of issues and offers to so-called sophisticated or professional investors and their transactions from prospectus requirements. In an effort to promote the Malaysian debt securities and Sukuk market whilst enhancing the breadth and depth of investment options on the Malaysian capital market, debt securities and Sukuk can now be listed on Bursa Malaysia under a new exempt regime by both listed and non-listed issuers. This framework is applicable to debt securities and Sukuk that are issued, offered or subscribed in accordance with section 229(1) and section 230(1) of the CMSA (i.e., an issue, offer or invitation of debenture to investors who do fall within Schedule 6 and Schedule 7 of the CMSA). This regime especially caters to issuers who intend to list their debt securities and Sukuk for listing status and profiling purpose. The targeted groups of investors for these securities are sophisticated or professional investors and not retail investors. By an exempt regime, it means that the debt securities or Sukuk which are listed on the Exchange will not be quoted nor traded on the Exchange. As stated above, under the exempt regime, prospectus exemption is adapted to the offers of bonds to sophisticated investors. See below for Quick Reference of Breakdown for Sophisticated Investors based on the Public Consultation Paper No. 1/2010 dated 19 March 2010.
<table>
<tr><th></th><th colspan="3">Sophisticated Investor</th></tr>
<tr><th></th><th>Sophisticated Investor</th><th>Professional Investor</th><th>Qualified Investor</th></tr>
<tr><td>• A unit trust scheme or prescribed investment scheme;</td><td>✓</td><td></td><td></td></tr>
<tr><td>• A holder of a Capital Markets and Services License who carries on the business of dealing in securities;</td><td>✓</td><td>✓</td><td></td></tr>
<tr><td>• A holder of a Capital Markets and Services License who carries on the business of fund management;</td><td>✓</td><td>✓</td><td></td></tr>
<tr><td>• The aggregate consideration for the acquisition is not less than RM250,000 or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise;</td><td>✓</td><td></td><td></td></tr>
<tr><td>• An individual whose total net personal assets exceed RM3 million or its equivalent in foreign currencies;</td><td>✓</td><td></td><td>✓</td></tr>
<tr><td>• A corporation with total net assets exceeding RM10 million or its equivalent in foreign currencies based on the last audited accounts;</td><td>✓</td><td>✓</td><td></td></tr>
<tr><td>• A licensed offshore bank under the Offshore Banking Act 1990;</td><td>✓</td><td>✓</td><td></td></tr>
<tr><td>• A licensed offshore insurer under the Offshore Insurance Act 1990;</td><td>✓</td><td>✓</td><td></td></tr>
<tr><td>• A licensed institution under the Banking and Financial Institution Act 1989 or an Islamic Bank under the Islamic Banking Act 1983;</td><td></td><td>✓</td><td></td></tr>
<tr><td>• An insurance company registered under the Insurance Act 1996;</td><td>✓</td><td></td><td></td></tr>
<tr><td>a. A statutory body established by an Act of Parliament or an enactment of any State;</td><td>✓</td><td></td><td></td></tr>
<tr><td>b. A pension fund approved by the Director General of Inland Revenue:</td><td>✓</td><td></td><td></td></tr>
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Table 22. continuation

Jurisdiction	Concept and Definition of Professional or Institutional investors	Remarks
Philippines	1. Under the *Securities and Exchange Commission (SEC) Memorandum Circular No.14, Series of 2006, the Rules Governing the Over-the-Counter (OTC) Market* (OTC Rules), **"qualified investor"** refers to **any of the qualified buyers** defined under section 10 (10.1 (L)) of the Securities Regulatory Code (SRC), any of the institutional accounts defined under SRC Rule 52.1, 6, D, or such other person declared by the SEC by rule or order as a **qualified investor**. In doing so, the SEC takes into account the person's net worth or financial background would allow him or her to bear the risk that may arise from participating in an OTC market. Pursuant to its authority prescribed under the SRC, the SEC issued SEC Memorandum Circular No.6, Series of 2007, **"Definition of Qualified Buyers (Qualified Buyer Rules)** under section 10 of the SRC" to prescribe regulations on determining individual or juridical persons that may be registered as **qualified buyers**. **A qualified individual buyer** shall be a natural person who: a. Has a minimum annual gross income of PHP25 million at least 2 years prior to registration, or a total portfolio in securities of at least PHP10 million registered with the SEC, or a personal net worth of at least PHP30 million; and b. Has been engaged in securities trading in his personal capacity, or through a fund manager, for a period of 1 year, or held for at least 2 years a position of responsibility in any professional or business entity that requires knowledge or expertise in securities trading. **A qualified institutional buyer shall have:** a minimum annual gross income of PHP100 million at least 2 years prior to registration, or a total portfolio in securities of at least PHP60 million registered with the SEC, or a personal net worth of at least PHP100 million. Investors who do not qualify under the definition of a qualified investor are considered public or retail investors. 2. Debt securities may not be offered for sale to the public, unless these securities are registered in accordance with sections 8 (SRC Rule 8.1) and 12 (SRC Rule 12.1) of the SRC. However, securities that are **exempt from registration** under section 9 (**Exempt Securities**) (SRC Rule 9.2) and section 10 (**Exempt Transactions**) (SRC Rule 10.1) of the SRC, respectively, may be offered for sale to the public. Here, SRC Rule means "Implementing Rules and Regulations of the Securities Regulation Code." **SRC Section 10.1 (k)** mentions that the sale of securities by an issuer to **fewer than twenty (20) persons** in the Philippines during any 12-month period is an **exempt transaction**. SRC Section 10.1 (k) is known as Private Placement in Philippines. **SRC Section 10.1 (L)** mentions that the sale of securities to any number of the qualified buyers is an exempt transaction. In relation to this, the 'Qualified Institutional Buyer' concept and the criteria for institutional vs. individual professional investors were laid out (added) by the SEC in 2007 through Qualified Buyer Rules, as stated above. 3. Qualified Buyer are as follows: a. Banks; b. Registered investment houses; c. Insurance companies; d. Pension funds or retirement plans maintained by the Government of the Philippines or any of its political subdivisions, or managed by a bank or other persons authorized by the Bangko Sentral ng Pilipinas to engage in trust functions; e. Investment companies; or f. Other persons as the SEC may determine, by rule, as qualified buyers on the basis of financial sophistication, net worth, knowledge and experience in financial and business matters, or amount of assets under management. **Exempt Transactions Requiring Notice:** Notice of exemption on SEC Form 10-1 shall be required in an offering or distribution of securities under section 10.1(k) and (L) of the SRC.	
Singapore	In Singapore, a public offer of bonds must be accompanied by a prospectus that is lodged with and registered by the Monetary Authority of Singapore (MAS), **unless an exemption applies**. The **exemptions to the prospectus requirements** include exemptions for offers that are made only to **institutional investors** and accredited investors, and personal offers where the total amount raised within any 12-month period does not exceed USD5 million. **Definition of Accredited Investor and Institutional Investor:** 1. **Accredited investor:** Under section 4A: Specific classes of investors of the *Securities and Futures Act* (SFA) (Chapter 289), an "accredited investor" is defined as: a. an individual whose net personal assets exceed SGD2 million, or whose income in the preceding 12 months is not less than SGD300,000; b. a corporation with net assets exceeding SGD10 million in value as determined by the most recent audited balance sheet of the corporation, or where the corporation is not required to prepare audited account regularly, a balance sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation; c. the trustee of a trust; or d. Such other person as the Authority may prescribe. 2. **Institutional investor:** Under section 4A: Specific classes of investors of the SFA, "Institutional investor" is defined as: a. a bank that is licensed under the Banking Act; b. a merchant bank that is approved as a financial institution under section 28 of the *Monetary Authority of Singapore Act*; c. a finance company that is licensed under the *Finance Companies Act*; d. a company or society registered under the *Insurance Act as an insurer*; e. a company licensed under the Trust Companies Act; f. the Government;	

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Table 22. continuation

Jurisdiction	Concept and Definition of Professional or Institutional investors	Remarks
	g. a statutory body; h. a pension fund or collective investment scheme; i. the holder of a capital markets services license for dealing in securities, fund management, providing custodial services for securities, real estate investment trust management, securities financing, or trading in futures contracts; j. a person (other than an individual) who carries on the business of dealing in bonds with accredited investors or expert investors k. the trustee of a trust; or l. Such other person as the MAS may prescribe.	
Thailand	There is **no defined concept of professionals**; it can be assumed that wholesale institutional investors represent the professionals. There is a concept of institutional Investors and high net worth investors in Thailand. Definition of **Institutional Investors** and **high net worth Investors** are clearly defined in the Notification of the Securities and Exchange Commission No. KorChor.5/2552. These concepts are related to the rule of exemption of the full disclosure based regulations. **1. "Institutional investors" means:** i. Commercial banks; ii. Finance companies; iii. Securities companies for management of proprietary portfolios or private funds or investment projects established under laws governing finance business, securities business and credit foncier business; iv. Credit foncier companies; v. Insurance companies; vi. Government units and state enterprises under laws governing budgetary procedures or any other juristic persons established under specific laws; vii. Bank of Thailand; viii. International financial institutions; ix. Financial Institutions Development Fund; x. Government Pension Fund; xi. Provident funds; xii. Mutual funds; xiii. Foreign investors with the same characteristics as investors under (1) to (12), mutatis mutandis; **2. "High net worth investors" means:** Individual persons having THB40 million baht (about USD1.3 million) or more of assets, excluding liabilities of such persons; Juristic persons having THB200 million baht or more in assets as recorded in the latest audited financial statements.	
Viet Nam	**Professional securities investors** mean commercial banks, financial companies, financial leasing companies, insurance organizations and securities trading organizations. (Article 6. Definition of terms in the Securities Law 2006)	

[a] The specified investors listed in (d.) above may opt out of the status as specified investors by an agreement with the financial instruments business operator, etc. Corporations and individuals that are not included in any one of (a.) to (d.) above may opt in by an agreement with the financial instruments business operator, etc. To become a specified investor, an individual is required to have net asset of JPY300 million yen or more, financial assets of JPY300 million or more, and an investment experience of at least 1 year.
Source: ADB Consultants, based on research materials and market visit information.

XXIII. Definition of Public Offering (and Private Placement or Exempt Regime)

Table 23. **Definition of Public Offering** (and Private Placement or Exempt Regime)

Jurisdiction	Details of Public Offering (and Private Placement)
People's Republic of China (PRC)	The "Self-regulatory Rules for Inter-bank Bond Market Non-financial Enterprise Debt Instrument on Private Placement" provides for the entire process involved in private placement instruments including issuance, registration, trading, and information disclosure, among others. Exempt Regime is not applied in PRC. In the Inter-bank Bond Market, there are mainly two ways to issue bonds: public offering and negotiating issuance for targeted investors. **Public offering:** In the public offering bond market of the PRC, the bonds can be issued in two ways: Issue by tender (public tender) through the issue system of the People's Bank of China and book building. Non-financial enterprises that satisfy the relevant provisions of *Circular of the People's Bank of China (Financial Market Department) on Matters Concerning the Issue of Bonds by Tender through the Issue System of the People's Bank of China (BSC [2011] No. 11)* can also issue the bond by public tender. **Negotiating Issuance - Private placement with targeted investors:** (Generally speaking Private placement related disclosure rules are sometimes different from the public placement based disclosure rules).

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Table 23. continuation

Jurisdiction	Details of Public Offering (and Private Placement)
	Issuers negotiate with underwriters on issuance conditions of bonds, subscription costs and bondholders responsibilities such as coupon rate, price, tenor, interest payment, amount and payment date, and sign an underwriter agreement. This type of issuance considers market factors and can therefore better reflect the market conditions. This type of issuance is an effective supplement of market-oriented bond issuance based on the market's demand. Under this method, based on the needs of the market, the issuing body will make decision in consultation with the bond subscription coupon bonds, price, term, interest-bearing manner, amount, payment date, subscription conditions, subscription costs and obligations of the Purchaser. Therefore the issuance with this method will better reflect needs of particular investors rather than prevailing market conditions. The market-oriented ways of issuing bonds is an effective supplement method.
Hong Kong, China	Methods of issuing Corporate Bonds: Private entities generally adopt one of the following methods to issue corporate bonds: a. **Public offering** for bonds intended to sell to the public; or b. **Private placement** for bonds intended to sell to a small group of investors. There are some differences in the requirements for the two methods. For instance, a more comprehensive and detailed prospectus is generally required for public offer whereas a relatively simple form of offer document or term sheet suffices for private placement. For details, refer to Part 2 of the Companies Ordinance. For bonds to be listed on the Hong Kong Stock Exchange (HKSE), corporates should also observe the requirements of the Listing Rules, as well as Parts II and XII of the CO including section 44B.
Indonesia	a. Exemptions for Private Issuance (Private Placement): A securities offering that does not meet the criteria for public offering (so-called private placement) is exempted from the obligation to submit Registration Statements to Bapepam-LK, and thus exempted from all offering requirements under Bapepam-LK rules. The criteria for public offering, which is offered within the jurisdiction of Indonesia, or offered to Indonesian citizens through mass media, or offered to more than 100 parties or sold to more than 50 parties in a certain limited amount at a certain time, is covered under article 1, No. 1a.15 of the Elucidation of the *Capital Market Law*. **A Sustainable Public Offering (so-called Shelf Registration)** is an initial public offering (IPO) for debit securities instrument (EBU) and/or *Sukuk* which are effected sustainably as regulated in *Peraturan Bapepam dan LK Nomor IX.A.15 tentang Penawaran Umum Berkelanjutan*. Sustainable Public Offering (Shelf Registration) is chosen in order to provide convenience for the issuer or public company with good performance to facilitate the IPO of EBU and/or *Sukuk* on a regular basis. Sustainable Public Offering should be implemented no longer than 2 years since the effectiveness of Registration Statement with certain criteria for both the issuer and securities. There is a Private Placement Market for medium-term notes (MTNs) and corporate bonds which could be registered by the central securities depository, Indonesian Central Securities Depository. The Indonesian regulatory framework does not specifically address the registration of MTN, but it regulates the registration procedures for bonds and Sukuk. In order to facilitate the issuance of MTN, which allows a firm to issue a series of bonds within a particular period with only one registration statement submission, Bapepam-LK released a new regulation on shelf-registration. Under the current regulatory arrangement, if bond issuance by non-residents is publicly offered, it must follow the procedures similar to the issuance by domestic firms, without any exception. This may hinder foreign issuers due to especially the requirements on domestic supporting professionals.
Japan	A public offering is generally subject to requirements to disclose the solicitation documents stipulated in the Financial Instruments and Exchange Act (FIEA), whereas a private placement (PP) is not. Disclosure requirements by way of filing a Securities Registration Statement and delivering a Prospectus under the FIEA and a related Order for Enforcement and Cabinet Office Ordinances are applicable to the solicitation of the public, i.e., public offering, for either an initial issue or sale of existing securities. The following categories are not deemed to be a public offering: (a) to a small number of investors (small number-private placement is a private placement to less than 50 people.) or (b) to qualified institutional investors (the QII-PP) or (c) to specified investors (the Offer to Specified Investor).
Republic of Korea	Public offerings generally refer to actions with the aim of selling to multiple ordinary investors. The Financial Investment Service and Capital Market Act (FSCMA) define a public offering as public offering and public sale. The term "public sale" in the FSCMA refers to gathering 50 or more investors, as calculated by a formula prescribed by Presidential Decree and FSC Regulation (Regulation on Issuance, Public Disclosure, etc. of Securities), to make an offer to sell or invite offers to purchase securities already issued (FSCMA Article 9[9]). In other words this means soliciting 50 or more investors (the sum of those who have received recommendations) that have not made, applied to, or bought the same type of securities as the relevant securities being offered within 6 months of the day offers to buy are made.
Malaysia	The Securities Commission (SC) and Bank Negara Malaysia introduced an **'exempt regime'**, reducing onerous listing requirements, including possibly fee waivers; this is most used for *Sukuk* listings. • In addition to AAA (local rating) exemption, an international rating BBB+ or better may also qualify issuer for disclosure exemption. • CMSA Schedules 6 and 7 regulate exemptions of disclosure, such as professional (here: 'sophisticated investors'), including insurance companies and high net worth individuals; details are available on the SC website.

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Table 23. continuation

Jurisdiction	Details of Public Offering (and Private Placement)
Philippines	• Differentiation of public or private placement: >19 investors, historic driver, possibly because of taxation issue • All issues require 'Registration Statement' to the Securities and Exchange Commission (SEC), constitutes basic disclosure exemptions are granted for securities issued only to primary institutional lenders or qualified buyers as defined in the Securities Regulation Code (SRC) sections 9 and 10, and the SRC Implementing Rules and Regulations. • Exempt issues are defined in SRC section 9; exempt securities are defined in SRC section 10; section 10k mentions distinction of <19 investors; 10l mentions 'Qualified Institutional Buyer' (QIB) concept; the criteria for institutional versus individual professional investors was laid out (added) by SEC in 2007 • No onward sale of section 10 securities to non-QIB.
Singapore	Public offering is the selling of registered securities to the broad market, rather than to a select group of investors. In Singapore, a public offer of bonds must be accompanied by a prospectus that is lodged with and registered by the Monetary Authority of Singapore (MAS), unless an exemption applies. Strictly speaking, the Bill removed the concept of "offer to the public" from the *Securities and Futures Act* (SFA). Instead, a prospectus will be required for all offers of investments unless they are specifically exempted. As a basic principle, such exemptions should only be given in limited circumstances where the cost of issuing a prospectus is not justified by the benefits of greater disclosure and investor protection. The exemptions to the prospectus requirements include exemptions for offers that are made only to institutional investors and accredited investors, and personal offers where the total amount raised within any 12-month period does not exceed USD5 million. Issuers of bonds that are offered to retail investors would normally seek a listing of these bonds on the Singapore Exchange and the bonds are normally in small denomination. Notices of bond offerings by statutory boards, domestic and foreign issuers are generally published in the newspapers or on the issuer's website. They outline issuance details such as auction dates, size and type of issue. General public offerings can be accessed through a prospectus database available at the MAS website under the Offers and Prospectuses Electronic Repository and Access tab. **Brief Summary of the Exemptions from Prospectus Requirements** a. Offers those are made to institutional investors or accredited investors and are not accompanied by public advertisements. (SFA 274+275) b. Private placement offers made to no more than 50 persons (See above private placement) (SFA 272B, etc.) c. An entity whose shares are already listed on the SGX may use an Offer Information Statement (OIS), instead of a prospectus, when issuing new types of securities such as bonds. An OIS has fewer disclosure requirements. d. Institutions offering continuously issued structured notes do not need to lodge and register a pricing statement with the MAS; the base prospectus and a transaction note, setting out the offer details prior to the purchase or subscription and a confirmation receipt thereafter, to the investors at the time of offer are sufficient. e. Small Offer: the total amount raised by the person from such offers within any period of 12 months does not exceed USD5 million (or its equivalent in a foreign currency), etc. (SFA 272 etc.) **Private placement** is the selling of unregistered securities directly, where offer is made to not more than 50 investors within a 12-month period. Private bond placements sometimes are not listed on a stock exchange. An issuer who offered the bonds through private placement can still seek a listing on SGX. Many of primary issuance is made in the form of private placement offers. Many Singapore dollar corporate bonds are placed privately at the issuer's or investor's (reverse enquiry) initiative.
Thailand	1. The bond can be offered for sale by way of Public Offering (PO) or Private Placement (PP). PP generally means to offer for sale to institutional investors (II), high net worth investors (HNWI) and specific investors. 2. Approval from the Securities and Exchange Commission (SEC) is required for the offer for sale by way of a Public Offering. A full filing form (a specific form prescribed by the SEC) and draft prospectus have to be submitted to the SEC. 3. PP (Narrow Distribution less than 10 people or Small Size) is exempt from filing requirement. 4. PP (II&HNWI) is exempt from full filing requirement. (Light requirement remains) 5. The concept of II or Qualified Foreign Institutional Investor (QFII) does not only apply to securities available for sale in the Exchange Market but also applies to debentures issued by way of private placement. 6. A credit rating is also required for an offer for sale by way of a PO and PP. 7. The newly issued bond must be registered with the Thai Bond Market Association. 8. A bond representative is needed for an offer for sale by way of a PO. 9. An annual report is required to be filed with the SEC.
Viet Nam	Public offering means an offering of securities according through one of the following methods: (a) Via mass media, including Internet; (b) Offering of securities to 100 investors or more, excluding professional investors; (c) Offering to an unspecified number of investors. Non-public offering (PP) of securities means an organization offers securities to less than 100 investors, not including professional security investors and not using mass media or the Internet.

Source: ADB Consultants, based on research materials and market visit information.

XXIV. Existence of Professional Investors-Only Market

Table 24. Existence of Professional Investors-Only Market

Jurisdiction	Status Quo of the Professional Investors-Only Market
People's Republic of China	Does not exist. Inter-bank Bond Market is a non-retail market, but that does not mean that it is a professional market.
Hong Kong, China	The Hong Kong Exchanges and Clearing Limited has performed market consultation on some proposed changes to the requirements for the listing of debt issues to professional investors only in December 2010 and the Rule amendments were effected in November 2011.
Indonesia	Does not exist.
Japan	TOKYO PRO-BOND market with listing on the TOKYO AIM. Offerees are limited to Specified Investors (the Offer to SI). This is a new market which is exempted from full disclosure requirements for public offerings.
Republic of Korea	The Qualified Institutional Buyer (QIB) market and trading system will be launched in 2012.
Malaysia	The Securities Commission and Bank Negara Malaysia introduced the **'exempt regime'**, reducing onerous listing requirements, including possibly fee waivers; this is most used for *Sukuk* listings. • In addition to AAA (local rating) exemption, an international rating BBB+ or better may also qualify issuer for disclosure exemption. • Capital Market and Services Act 2007 Schedules 6 and 7 regulate exemptions of disclosure, such as professional (here: 'sophisticated investors'), including insurance companies and high net worth individuals.
Philippines	**Exemptions** are granted for securities issued only to primary institutional lenders or qualified buyers as defined in the Securities Regulation Code (SRC) sections 9 and 10, and the SRC Implementing Rules and Regulations.
Singapore	There is a market which is **exempted from Prospectus Requirements:** a. Offers are made to **institutional investors** or **accredited investors** and are not accompanied by public advertisements. (Securities and Futures Act [SFA] 274+275) b. Private placement offers made to no more than 50 persons (See above private placement) (SFA 272B etc.) c. An entity whose shares are already listed on the Singapore Exchange may use an Offer Information Statement (OIS), instead of a prospectus, when issuing new types of securities, such as bonds. An OIS has fewer disclosure requirements. d. Institutions offering continuously issued structured notes do not need to lodge and register a pricing statement with the Monetary Authority of Singapore; the base prospectus and a transaction note, setting out the offer details prior to the purchase or subscription and a confirmation receipt thereafter to the investors at the time of offer are sufficient. e. Small Offer: the total amount raised by the person from such offers within any period of 12 months does not exceed SGD5 million (or its equivalent in a foreign currency), etc. (SFA272 etc.)
Thailand	Does not exist explicitly. But, Private Placement (PP) is exempt from full filing requirement. a. Private Placement (PP) generally means to offer for sale to institutional investors (II), high net worth investors (HNWI), and specific investors. b. Approval from the Securities and Exchange Commission (SEC) is required for the offer for sale by way of a Public Offering (PO). A full filing form (a specific form prescribed by the SEC) and draft prospectus have to be submitted to the SEC. c. PP (Narrow Distribution less than 10 persons or Small Size) is exempt from filing requirement. d. PP (II&HNWI) is exempt from full filing requirement. (Light requirement remains) e. The concept of II or Qualified Foreign Institutional Investor (QFII) does not only apply to securities available for sale in the Exchange Market but also applies to debentures issued by way of private placement. f. A credit rating is also required for an offer for sale by way of a PO and PP. g. The newly issued bond must be registered with the Thai Bond Market Association. h. A bond representative is needed for an offer for sale by way of a PO. Not necessary for PP. i. An annual report is required to be filed with the SEC.
Viet Nam	Does not exist. But, there is so far a concept of the institutional investors. 1. Item 11, article 6 of *Securities Law No. 70/2006/QH11* defines "institutional investors [as] commercial banks, financial companies, financial leasing companies, insurance organizations and securities trading organizations." 2. Not clear about the concepts of wholesale and retail in this market. 3. Private placement (non-public offering) concept is not clearly defined in the laws and regulations in Viet Nam. 4. Private placement (non-public offering) is not regulated in Viet Nam.

Source: ADB Consultants, based on research materials and market visit information.

XXV. Market Capitalization – Size of the Local Currency Bond Market (as of March 2011)

Table 25. Market Capitalization – Size of Local Currency Bond Market (as of March 2011) ($ billion)

Jurisdiction	Government	Corporate	Total
People's Republic of China	2,369.8	696.4	3,066.2
Hong Kong, China	87.6	78.7	166.3
Indonesia	103.9	13.9	117.8
Japan	10,425.5	1,087.3	11,512.8
Republic of Korea	524.3	687.2	1,211.5
Malaysia	160.6	108.4	269.0
Philippines	63.6	9.4	73.0
Singapore	105.7	84.9	190.6
Thailand	180.9	44.1	225.0
Viet Nam	14.2	1.4	15.6

Source: AsianBondsOnline.

XXVI. Size of Foreign Currency Bond Market (as of March 2011)

Table 26. Size of Foreign Currency Bond Market (as of March 2011) ($ billion)

Jurisdiction	Government	Corporate	Total
People's Republic of China	13.0	58.7	71.7
Hong Kong, China	1.6	70.8	72.4
Indonesia	18.0	17.3	35.3
Japan	33.6	78.2	111.8
Republic of Korea	21.7	110.7	132.4
Malaysia	3.0	22.2	25.2
Philippines	34.1	7.3	41.4
Singapore	0.0	36.4	36.4
Thailand	1.4	6.7	8.1
Viet Nam	2.3	0.1	2.4
Total	128.7	408.4	537.1

Source: AsianBondsOnline.

XXVII. Islamic Finance related Issues

Table 27. Islamic Finance-Related Issues

Jurisdiction	Existence of the Islamic Finance Market	Explanation
People's Republic of China	No	
Hong Kong, China	Yes	1. Regulatory framework for Islamic Finance: Save for the relevant laws relating to tax issues, the regulatory and legal framework for Islamic finance largely follows the one applicable to conventional debt instruments. 2. Type of instruments available, segments, tenure, etc.: Though the market infrastructure, regulatory and legal framework is in place, the market remains inactive for the time being probably due to the tax issues.

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Table 27. continuation

Jurisdiction	Existence of the Islamic Finance Market	Explanation
		3. Basic market infrastructure required to facilitate Islamic Finance: Enhancements have been made to US dollar and euro real-time gross settlement systems as well as Central Moneymarkets Unit (CMU) in Hong Kong to facilitate participating members to identify transactions related to Islamic finance and to segregate Islamic-related funds from others. 4. Tax-related issues: The key tax issue relating to Islamic bonds is that the arrangement operates in the form of equity finance but is in substance similar to debt finance. In Hong Kong, tax law treats debt and equity differently. For instance, interest income and interest expenses arising from a debt finance arrangement may be taxable and deductible subject to certain conditions. In contrast, dividend income and distributions arising from an equity finance arrangement are generally not taxable or deductible. As a result of the heavier tax burden, issuing and/or investing in Islamic bond may be less favorable than issuing and/or investing in conventional debt instruments. The Government is studying how to take forward amendments to the relevant laws to facilitate development of a local Islamic bond market by leveling the playing field for Islamic bonds vis-à-vis their conventional counterparts as far as tax arrangements are concerned.
Indonesia	Yes	According to Bapepam-LK Rule No IX.A.13 concerning Issuance of Shari'a Securities, *Sukuk* are Shari'a Securities in a form of certificate or proof of ownership which have the same value and represent a participation unit which is not separated from or consists of underlying assets. A. Islamic bonds (Sukuk) in Indonesia have had the following fatwa and legal basis: 1. *Fatwa No. 32/DSN-MUI/IX/2002* concerning Shari'a Bonds 2. *Fatwa No. 33/DSN-MUI/IX/2002* concerning Shari'a Mudharabah Bonds 3. *Fatwa No. 40/DSN-MUI/X/2003* concerning the Capital Market and the General Guidelines for Implementation of Shari'a in the Capital Market 4. *Fatwa No. 41/DSN-MUI/III/2004* concerning Shari'a Ijarah Bonds 5. *Fatwa No. 59/DSN-MUI/V/2007* concerning conversion of Shari'a Mudharabah Bonds 6. *Fatwa No. 69/DSN-MUI/VI/2008* concerning of the Government Shari'a Securities (Surat Berhaga Syariah Negara, SBSN) 7. *Fatwa No. 70/DSN-MUI/VI/2008* concerning the method of SBSN Issuance 8. *Fatwa No. 71/DSN-MUI/VI/2008* concerning of Sale and Lease Back of *Ijarah* SBSN 9. *Fatwa No. 69/DSN-MUI/VI/2008* concerning SBSN Ijarah Sale and Lease Back B. Government *Sukuk*: Domestic Issuance: 1. Book Building (*Finance Minister Regulation No. 118/PMK.08/2008* regarding Domestic *Sukuk* Issuance In Primary Market Through Bookbuilding; 2. Auction (*Finance Minister Regulation No. 11/PMK.08/2009* regarding Government *Sukuk* Auction In Primary Market); 3. Book Building (*Finance Minister Regulation No. 218/PMK.08/2008* regarding Retail *Sukuk* In Primary Market); Changes: *No. 10/Pmk.08/2007; 172/Pmk.08/2010*; 4. Private Placement (*Finance Minister Regulation No. 75/PMK.08/2009* regarding Government *Sukuk* Private Placement Issuance) International Issuance: 1. Book Building/Public Offering *Finance Minister Regulation No. 152 /PMK.08/2008* regarding Foreign-Denominated Sukuk Issuance In International Market; the changes: No. 129/PMK.08/2009; 2. Private Placement (*Finance Minister Regulation No. 75/PMK.08/2009* regarding Government *Sukuk* Private Placement Issuance).
Japan	Yes	Japan has strong economic ties with Islamic countries, which are demonstrated by huge cash outflow from Japan to those countries every year. Facilitating the reverse flow of investment from Islamic countries towards Japan and other Asian regions is very meaningful for a balanced growth of the global economy, particularly in the age of a high oil price. In 2007, a number of Japanese public and private institutions started to explore Islamic finance as one of the means to attract Islamic investors to invest in Japan by participating in the Islamic Financial Services Board (IFSB), an international standard-setting organization for the Islamic finance services industry headquartered in Malaysia, as observer.

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Table 27 continuation

Jurisdiction	Existence of the Islamic Finance Market	Explanation
		For the time being, Japan is not equipped with a full-ranged regulatory framework for operating Islamic Finance. However, in December 2008, the Japanese banking and insurance business regulation was relaxed to allow subsidiaries of Japanese banks and insurance companies to provide certain Islamic Finance services in such forms as *Murabahah* (cost-plus sale) or *Ijarah* (leasing) by amending the Ordinance for Enforcement of the *Banking Law and the Insurance Business Law*. At present, there are a few cases where subsidiaries of Japanese banks are applying for the regulatory authorization required for conducting Islamic financial operations overseas. Issues of Shari'a compliance, or that of supervision of the market, have not yet been taken up for discussion in Japan. In 2010, further steps were contemplated to facilitate *Sukuk* issuance by Japanese domestic corporations (or other public or quasi-public entities) under the Japanese legal system. Since the latter half of 2010, the momentum within the Japan Financial Services Agency accelerated. The National Diet passed a bill on 17 May 2011 to facilitate *Sukuk* issuance in Japan by amending the *Asset Securitization Act*. The bill is accompanied by amendments on relevant tax legislation with a view to creating a level tax playing field compared to conventional bonds.
Republic of Korea	No	
Malaysia	Yes	The Malaysian *Sukuk* market has shown remarkable progress since its introduction in 1990. Malaysia has successfully created a niche market in this area. It is estimated that from January to September 2011, based on Islamic Finance Information Service, 70% of the total global Islamic bonds that have been issued were issued in Malaysia, making Malaysia one of the world's largest *Sukuk* markets. In 2010, Sukuk issuance amounted to MYR 30 billion, accounting for 56% of total *Sukuk* issuance. In 2009 and 2010, *Sukuk* were extremely popular with issuers and investors alike, eclipsing conventional bonds and accounting in both years for more than 50% of issuance. Demand for Islamic paper by Islamic and conventional investors was strong, and major issuers, in particular the toll road concessionaires and power supply companies, took advantage of lower issuance costs as the demand led to more competitive bidding. Issuers are no longer constrained by the legal concept of debentures (debt-based), as required for conventional products, following the implementation of the latest *Sukuk* Guidelines made effective by the Securities Commission in August 2011.
Philippines	No	
Singapore	Yes	In 2005, Singapore was accepted as a full member of the IFSB, an international body based in Malaysia that defines regulatory and supervisory standards governing Islamic financial services. In January 2009, Singapore launched its first Islamic bond program worth SGD200 million.
Thailand	Yes	Thailand is at the early stage of developing an Islamic bond market. The specific regulations for issuance and offering of *Sukuk* were only announced in early January 2011. The regulatory framework falls under the Securities and Exchange Commission Act and Trust for Transactions in Capital Market Act, respectively.
Viet Nam	No	

Source: ADB Consultants, based on research materials and market visit information.

Appendix

Items to be included in the SF1 Market Guides for the region

Points for comparative analysis based on the questionnaire.

1. Governing Law for Corporate Bonds Issuance
2. Definition of Securities (Bonds)
3. Competent Authority (Regulator)
4. Issuing Approval Method
5. Role of the SROs
6. Purpose of the Listing of Bonds (e.g., profiling or real listing)
7. Obligation for the Listing of Bond
8. Main Trading Places (Over the Counter or Exchange)
9. Necessity of the Credit Rating
10. Method of Registration of Bonds
11. Status of the Bonds (Bearer or Registered)
12. Form of the Bonds (Scripless or Physical)
13. Status of the Scripless Bonds (Complete Dematerialized or Immobilized)
14. Existence of the exchangeability of the Scripless Bond to the Physical Bonds
15. Method of Transfer of Interest in Bonds
16. Finality of Settlement
17. Legal Basis and Definition of "Settlement and Clearing"
18. Existence of the Omnibus Accounts
19. Existence of the Nominee Concept
20. Regulators' Policy related to the necessity of Disclosure of Ultimate Beneficially Owner
21. Documentation Language
22. Definition of the Payment Default
23. Bankruptcy Procedures
24. Existence of the Meeting of Bondholders
25. The Way of Trustee (Bond Representative or Commissioned Persons) System
26. The definition of Professional or Institutional Investors
27. Public Offering Market (Full Disclosure) Rules and Regulation
28. Private Placement Rules and Definition of Professional (Institutional) Investor and High Net Worth Investors (HNWI)
29. Islamic Finance-Related Issues

Reference

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Table A1.1 continuation

Article 3

This Decision shall be of full force and effect fifteen (15) days from the date of its publication in the Official Gazette and shall replace Decision 163-2003-QD-TTg of the Prime Minister dated 5 August 2003 on approval of the strategy for development of the Vietnamese securities market up to 2010.

Article 4

Ministers, Heads of ministerial equivalent bodies, Heads of Government bodies, Chairmen of People's Committees of provinces and cities under central authority and Heads of relevant bodies shall be responsible for implementation of this Decision.

Prime Minister
NGUYEN TAN DUNG

Source: Hanoi Stock Exchange. http://www.hsx.vn/hsx_en/Modules/Phapquy/VAN_BAN_PHAP_QUY_FILE_download.aspx?ID_FILE=1427&TEN_FILE=Dn128gv2Aug07VietnamCapitalMarket.pdf

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