



# Characteristics of the Brunei Bond Market

Historically, Brunei Darussalam's *sukuk* issuances have mostly been sovereign *sukuk*. Since 2006, the Government of Brunei Darussalam has maintained a continuous program of *sukuk* issuance with progressively longer maturities. Domestic issuance of *sukuk* is limited, but demand is still high.

The characteristics specific to the Brunei bond market are described in more detail in this chapter.

## A. Definition of Securities

The definition of securities in Brunei Darussalam can be found in the Schedule to the SMO.

### 1. Securities Markets Order, 2013

Securities as defined under Schedule—Securities and Investment Business, Part I include the following

- (i) shares,
- (ii) debenture,
- (iii) government and public securities,
- (iv) instruments creating entitlements to shares or securities,
- (v) certificates representing securities,
- (vi) units in collective investment scheme,
- (vii) options,
- (viii) futures, and
- (ix) contracts for differences.

An additional definition for debenture is provided in section 115 of the Schedule, which is intended to apply to Part V (Public Offering) of the SMO only.

### 2. Definition of Debenture

Debenture includes debenture securities, bonds, notes and any other evidence of indebtedness of a company for borrowed moneys, whether or not constituting a charge on the assets of the company, but shall not be construed as applying to any of the following:

- (a) 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;
- (b) a cheque, banker's draft, or any other bill of exchange or a letter of credit;

- (c) a banknote, guarantee or an insurance policy;
- (d) a statement, passbook or other document showing any balance in a current, deposit, or savings account;
- (e) 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;
- (f) any instrument or product or class of instruments or products as AMBD may recommend, as prescribed by order published in the Gazette.

## B. Types of Bonds, Notes, and *Sukuk*

The types of bonds, notes, and *sukuk* available in the Brunei bond market are described below.

### 1. Brunei Government *Sukuk* Al-Ijarah

Brunei Government *Sukuk* Al-Ijarah is an Islamic bond in which the issuance is based on underlying assets. The *sukuk* certificates are currently available in 91-day and 364-day maturities only.

### 2. Corporate *Sukuk*

To date, there has been only one corporate issuance of *sukuk* in 2006. The *sukuk* was a 6-year *Sukuk* Al-Ijarah worth BND100 million that was issued to finance major capital investment projects.

## C. Money Market Instruments

Money market instruments are short-term debt instruments issued by either the Government of Brunei Darussalam or the private sector. Money market instruments are generally limited to instruments with a maturity of less than 1 year.

### 1. Instruments issued by the Government

The Brunei Government *Sukuk* Al-Ijarah is short-term in nature with a maximum tenor of 1 year. These *sukuk* are available to banks in Brunei Darussalam.

### 2. Other Money Market Instruments

AMBD is considering developing additional money market instruments to further support the domestic money market and, subsequently, to support the development of Islamic financial markets in Brunei Darussalam.

## D. Segmentation of the Market

Brunei Government *Sukuk* Al-Ijarah is the only type of *sukuk* available in the domestic bond market. The total amount of outstanding *sukuk* at the end of 2016 stood at BND473.2 million. Detailed information on the outstanding value and new issuances of Government *Sukuk* Al-Ijarah can be found on the website of AMBD.

Appropriate links are also provided in Chapter VII and Appendix 1.

## E. Methods of Issuing Bonds, Notes, and *Sukuk* (Primary Market)

Methods of issuance available in the Brunei bond market are explained in this section.

### 1. Government Securities Offering

AMBD, acting as an agent of the Government of Brunei Darussalam, issues Brunei Government *Sukuk* Al-Ijarah through an auction and is entrusted to handle all matters pertaining to the issuance and the administration of these securities.

There are two types of bidding allowed for the Brunei Government *Sukuk* Al-Ijarah as listed below.

#### a. Competitive Bidding

Primary Market Participants are required to submit a bid and specify the quantity and the yield or price.

#### b. Noncompetitive Bidding

Primary Market Participants may submit bids by specifying the desirable quantity only.

### 2. Debenture Issuance Programme

The SMO contains provisions for a “debenture issuance programme,” which is defined as follows:

“Debenture issuance programme” means any scheme or arrangement by an entity for the issuer of debentures or units of debentures where only part of the maximum amount of aggregate number of debentures or units of debentures under the programme is offered initially and a further tranche or tranches may be offered subsequently.

Corporate issuers would, hence, be able to utilize these provisions for their future issuances.

## F. Governing Law and Jurisdiction (Bond, Note, and *Sukuk* Issuance)

The governing law and jurisdiction for a bond, note, or *sukuk* issuance is of significance since potential issuers may consider issuing under the laws or jurisdiction of a country or market other than the place of issuance. The choice of governing law or contractual preferences of stakeholders may affect the accessibility to a specific investor universe that may otherwise not be accessible if a bond, note, or *sukuk* were issued under the laws of the place of issuance.

There is no legal restriction that the governing law and jurisdiction for a bond, note, or *sukuk* issuance in the Brunei bond market must be governed by the laws of Brunei Darussalam. The choice of governing law and jurisdiction is at the preference of the issuer, taking into account the availability of expertise and cost.

## **G. Language of Documentation and Disclosure Items**

Contracts or agreements in the context of a bond, note, or *sukuk* issuance; the issuance documentation and disclosure items; and all applications, approvals, and correspondence with regulatory authorities and market institutions can be in English in Brunei Darussalam.

## **H. Registration of Debt Securities and Sukuk**

The typical functions associated with a registration concept, such as provision of bond information, continuous disclosure, and the determination of a fair market price, are carried out by institutions that are mandated for such functions, including AMBD and information vendors. Their roles and the corresponding functions are explained elsewhere in this bond market guide.

For details on the AMBD approval process of the Registration Statement, please see Chapter II.F.

## **I. Listing of Debt Securities**

At present, there is no listing provision for debt securities listing. However, Brunei Darussalam is preparing for the establishment of the Brunei Securities Exchange, for which relevant respective working groups are laying down the necessary framework, including the preparation of listing rules, trading rules, clearing rules, depository rules, and delivery-versus-payment rules.

## **J. Methods of Trading Bonds, Notes, and Sukuk (Secondary Market)**

The over-the-counter (OTC) market is the main trading venue for Brunei Government Sukuk Al-Ijarah issued in Brunei Darussalam. At the moment, Brunei Government Sukuk Al-Ijarah are traded in the OTC market between participants via telephone or other electronic platforms.

## **K. Bond and Note Pricing**

In the absence of bond pricing agencies in Brunei Darussalam, quotes may be obtained from the Primary Market Participants.

## **L. Transfers of Interest in Bonds and Notes**

Generally, the transfer of any Brunei Government Sukuk Al-Ijarah is processed and managed by the appointed depository.

## M. Market Participants

### 1. Issuers

The Government of Brunei Darussalam is the main contributor to the *sukuk* market. Corporates are also allowed to issue debt securities or *sukuk*, although there have been no recent corporate issuances.

### 2. Investor Base

Brunei Government Sukuk Al-Ijarah are offered to Primary Market Participants, which are mainly made up of the domestic financial institutions, which include banks and insurance companies, and statutory bodies in Brunei Darussalam.

Please also see sections K, L, and M in Chapter II for applicable regulations for nonresidents.

### 3. Parties Involved in Debt Securities and Sukuk Issuance

The parties involved in debt securities and *sukuk* issuance are briefly reviewed in this section. Credit rating agencies are separately mentioned in Chapter II.N. Some of the terms used for the roles and functions of market participants in this context are specific to the Brunei bond market.

#### a. Primary Market Participants

Institutions can apply to be Primary Market Participants for the Brunei Government Sukuk Al-Ijarah Programme, where the application will be assessed by the relevant authorities. Primary Market Participants are allowed to tender their biddings for Brunei Government Sukuk Al-Ijarah in the primary market and conduct transactions with each other.

#### b. Arranger or Lead Arranger

The appointment of an (lead) arranger is not mandatory under Brunei bond market regulations, including for foreign issuers aiming to offer debt instruments and *sukuk* issued in the Brunei bond market.

At the same time, using an (lead) arranger may be practical, in particular if the issuers intend to distribute the debt securities or *sukuk* to a larger audience or introduce a new type of debt securities instrument. The (lead) arranger will structure the debt securities or *sukuk* proposal, help obtain necessary approvals for *sukuk*, and assist the issuer in compiling issuance documentation and lodge a prospectus with AMBD.

#### c. Paying Agent

The paying agent is responsible for the cash flow involved in a bond, note, or *sukuk* transaction, specifically in receiving the proceeds from the issuance on behalf of the issuer and remitting the proceeds to the issuer, as well as the payment of interest or consideration and redemption amounts to investors. The function includes the withholding of taxes and duties as may be applicable.

AMBD acts as the paying agent for Brunei Government Sukuk Al-Ijarah.

#### d. Syariah Adviser

The appointment process of Syariah Advisers for financial institutions is set out in section 15 of Syariah Financial Supervisory Board Order, 2006. The appointment of Syariah Advisers must be approved by the SFSB.

#### e. Law Firms and Accounting or Audit Firms

Law firms and accounting or audit firms who service capital market participants in Brunei Darussalam are not required to be registered with AMBD. They are registered with their respective supervising agencies (e.g., the Revenue Division of the Ministry of Finance in case of audit firms.)

## N. Definition of Investor Classes

In Brunei Darussalam, the following are the specific classes of investors as provided under section 20 of the SMO:

- (a) Accredited Investors include
  - (i) an individual
    - A. whose net personal assets exceed in value BND2 million (or its equivalent in a foreign currency) or such other amount as AMBD may prescribe in place of the first amount; or
    - B. whose income in the preceding 12 months is not less than BND300,000 (or its equivalent in a foreign currency) or such other amount as AMBD may prescribe in place of the first amount;
  - (ii) a corporation with net assets exceeding BND10 million in value (or its equivalent in a foreign currency) or such other amount as AMBD may prescribe, in place of the first amount, as determined by
    - A. the most recent audited balance-sheet of the corporation; or
    - B. where the corporation is not required to prepare audited accounts 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 as of the date of the balance-sheet, which date shall be within the preceding 12 months;
  - (iii) the trustee of such trust as AMBD may prescribe, when acting in that capacity; or
  - (iv) such other person as AMBD may prescribe.
- (b) Expert Investors include
  - (i) a person whose business involves the acquisition and disposal, or the holding, of securities, whether as principal or agent;
  - (ii) the trustee of such trust as AMBD may prescribe, when acting in that capacity; or
  - (iii) such other person as AMBD may prescribe.

- (c) Institutional Investors include
- (i) a bank licensed under the Banking Order, 2006 (S45/2006) or Islamic Banking Order, 2008 (S96/2008);
  - (ii) a finance company licensed under the Finance Companies Act (Chapter 189);
  - (iii) a person registered under the Insurance Order, 2006 (S48/2006) or Takaful Order, 2008 (S100/2008);
  - (iv) a company licensed under the International Trusts Order, 2000 (S55/2000);
  - (v) the Perbadanan Tabung Amanah Islam Brunei established under section 3(1) of the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163);
  - (vi) the Government of His Majesty the Sultan and Yang Di-Pertuan;
  - (vii) a statutory authority established under any written law;
  - (viii) a pension fund or a collective investment scheme;
  - (ix) the holder of a Capital Markets Services Licence granted under this Order;
  - (x) the trustee of such trust as AMBD may prescribe, when acting in that capacity; or
  - (xi) such other person as AMBD may consider as an institutional investor based on the knowledge and experience of that person in securities including his ability to hire specialists with corresponding knowledge and experience, volume of his net assets, or net assets under his management or other similar criteria.

For all intents and purposes, these specific classes of investors can be regarded as qualified buyers or professional Investors.

## O. Credit Rating Requirements

This section covers the applicable credit rating requirements for bonds and notes issued in the Brunei bond market. For details on the underlying regulations for credit rating agencies and their operations, please refer to Chapter II.N.

At present, there are no credit rating requirements for debt securities and *sukuk* issuances in Brunei Darussalam.

## P. Market Features for Investor Protection

This section reviews a number of topics that have a bearing on the protection of investors in the Brunei bond and *sukuk* markets, in particular retail (or nonprofessional) investors.

### 1. Investor Complaints

AMBD has set up the Financial Consumer Issues Unit to review complaints regarding any matter that relates to licensed financial institutions.

### 2. Retail Investors

Under section 253 of the SMO, AMBD is mandated to establish an Investor Compensation Scheme, in which the principal objects of this scheme are to set up and

manage a scheme to provide compensation for eligible investors where a regulated person is in financial distress.

### 3. Foreign Investors

Foreign investors are afforded similar safeguards as those made available to retail investors.

### 4. Bondholder Rights

Under section 153A of the Companies Act (Chapter 39), a bondholder of a company may apply to the courts for an order to

- (i) direct or prohibit any act or cancel or vary any transaction or resolution;
- (ii) regulate the conduct of the affairs of the company in the future;
- (iii) authorize civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the court may direct;
- (iv) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company, or by the company itself;
- (v) in the case of a purchase of shares by the company, provide for a reduction accordingly of the capital of the company; and
- (vi) provide that the company be wound up.

In cases where an order that the company be wound up is made pursuant to subsection (2)(f), the provisions of the Insolvency Order, 2016 (S11/2016) relating to the winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made on an application duly made to the court by the company.

### 5. Trust Agent or Bond Trustee

There are no specific regulations or guidelines on the appointment of a bond trustee and the drawing up of a trust deed for bonds, notes, and *sukuk* issuers, but this is still subject to revision in the near future. Brunei Darussalam is in the final stages of the promulgation of the Trusts Companies Order, 2017 and Trusts Companies Regulations, 2017, which provide for the licensing and regulation of trust companies.

For more details on the bond trustee function, please also see section Q in this chapter.

### 6. Prevention of Fraud

Section 128 of the SMO provides for misleading statements and practices in relation to a prospectus.

### 7. Ethics

Sections 25 and 26 of the SMO 2013 provide for the promotion of high standards of integrity and fair dealing.

### 8. Investor Compensation Scheme

AMBD, under section 253 of the SMO, is given the statutory mandate to establish a body called the Investor Compensation Scheme, the principal objects of which are to set up and manage a scheme to provide compensation for eligible investors in cases where a regulated person is in financial distress.



### **Q. Bond or *Sukuk* Trustee**

Although it is not an express requirement, all bonds, notes, and *sukuk* issuers are expected to enter into a Trust Deed with an appointed Bond Trustee. This would form part of the supporting document needed for the registration process with AMBD.

At the moment, there are no specific requirements for a Trust Deed in the regulations but AMBD is currently working on the Bond Trustee Requirements.

When the Trusts Companies Order, 2017 and Trusts Companies Regulation, 2017 become effective, all trust business, including the provision of services with respect to the creation of an express trust, will need to be licensed.

### **R. Bankruptcy and Insolvency Provisions**

The bankruptcy and insolvency framework can be found in the Companies Act (Chapter 39) and the Insolvency Order 2016 (S1/2016).

### **S. Event of Default and Cross-Default**

Generally, the descriptions of events of default are negotiated and described in the bond documentation or prospectus, or in the case of a Trust Deed, in the trust instrument.