III

Characteristics of the Indonesian Bond Market

The Government of Indonesia issues securities regularly and in a variety of forms and tenors to meet is budgetary needs and cater to different investor universes. BI continues to issue its own securities to support its open market operation and to offer liquidity management tools for the financial industry. Corporate bonds and notes in the Indonesian market are typically issued in rupiah; this is also the case for private placements to professional market participants.

Indonesian issuers, both sovereign and corporate, have been issuing IDR-denominated debt securities across a number of categories for many years and in significant volume, for both conventional bonds and *sukuk*. Hence, local currency issuance is a familiar issuance approach to both issuers and investors in Indonesia, including foreign institutional investors. Foreign-currency-denominated private placements have also been observed in the Indonesian market.

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

A. Definition of Securities

The current fundamental and key legislation does not contain a consolidated definition of securities. Instead, securities are mentioned and some examples are given in both legislation and a number of applicable regulations for the individual purposes of and use by market institutions.

1. Definition in the Capital Market Law

Pursuant to the Capital Market Law, 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.

2. Reference to Debt Securities in Bank Indonesia Regulations

BI regulations refer to debt securities in the following manner:

> Debt Securities are debt instruments, notes payable, bonds, credit securities, or its respective derivative, or other interests, or a liability of the issuers, in the form of commonly traded instruments at capital and money markets, including bonds issued by multilateral institutions or supranational in which all funds from the issuance of bonds are used for the financing interest of economic activities in Indonesia, including securities based on Sharia principle.

For specific definitions of individual debt instruments, readers are directed to BI's Circular Letter to All Commercial Banks and Intermediary Agencies in Indonesia concerning Open Market Operations, which also explains its role in the issuance and handling of debt securities in great detail.[18]

3. Reference to Debt Securities in Indonesia Stock Exchange Rules

In the definitions of its Rule Number III-C concerning Securities Exchange Membership to Perform Debt Securities, Sukuk, and Fixed Income Asset-Backed Securities Trading, IDX refers to debt securities, as follows:

> Debt Securities means Debt Securities as set forth in Bapepam-LK Rule Number IX.C.11 concerning Rating Upon Debt Securities, and Securities issued and guaranteed by the Government of Indonesia as intended in Article 70 paragraph (2) letter d of Law Number 8 of 1995 concerning Capital Market.

4. Debt Securities in Indonesia Clearing and Guarantee Corporation Rules

KPEI Rule Number V-1 on Clearing and Transaction Settlement Guarantee of Debt Securities provides a practical reference to debt securities as follows:

> Debt Securities are Scripless Debt Securities listed and traded in the Stock Exchange.

5. Debt Securities in Indonesia Central Securities Depository Regulations

In Chapter 1 (1.1 Definitions) of its CSD Regulations, KSEI defines debt securities in the following manner:

> Debt Securities shall mean the Securities in the form of debentures which have been registered by the Securities Issuer at KSEI, Certificates of Bank Indonesia, and Government bonds.

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

The amount issuance of debt securities—conventional and *sukuk*, as well as ABS—in the Indonesian market is significant and comes in a variety of debt securities types and formats by a multitude of issuers. While the Indonesian government is the main issuer of debt securities, the market also features substantial issuances from the private sector, plus instruments issued by BI, and municipal bonds. Debt securities are issued mostly in Indonesian rupiah but selected instruments may also be issued in foreign currencies, including in the domestic market.

1. Debt Securities Issued by the Government

Debt securities issued by the Government of Indonesia are typically referred to in their entirety as Surat Berharga Negara (SBN), including in official statistics issued by BI and other institutions.[19] SBN, in effect, consist of Treasury bonds and Treasury bills, retail bonds of different varieties, as well as their equivalent *sukuk.* Collectively known as SBN, Treasury bonds and Treasury bills are also referred to as Surat Utang Negara (SUN).

[18] See http://www.bi.go.id/en/peraturan/moneter/Documents/SE_173715.pdf
[19] An example from the Bank Indonesia website is available at http://www.bi.go.id/en/iru/market-data/ownership-government-bi-securities/Pages/SBN-October-2016.aspx

Government securities are issued in Indonesian rupiah domestically, as well as in foreign currencies in international markets, pursuant to regulations issued by the MOF.

The legal basis for the management of SUN and Sukuk Negara (SBSN) is contained in Law No. 24/2002 on Government Debt Securities and Law No. 19/2008 on Government Sharia Securities. These laws are supplemented by other derivative regulations, comprising government regulations, MOF decrees, and director general's letters to cover the management of government securities (SUN and SBSN), excluding the instrument types which may be employed under the discretionary policy of the Directorate General of Budget Financing and Risk Management.

a. Government Debt Securities (Obligasi Negara)

The legal basis for the issuance of (conventional) government debt securities is Law Number 24 of 2004 concerning Conventional Based Government Securities. The law describes government bonds as government debt securities with a maturity of more than 12 months that have been issued with a coupon or at a discount. Market participants and official MOF materials refer to government bonds as the abbreviation for Obligasi Negara (ON), which may be placed via public offers or private placements in the domestic or in international markets (see section E of this chapter).

Since 2002, the Government of Indonesia, represented by the MOF, has issued different types of government bonds based on this law as the government has the flexibility to issue any type of bonds that meet market preferences. As such, the government has issued series including coupon-bearing and zero-coupon bonds; fixed- and variable-rate bonds; and tradable and nontradable bonds, including retail bonds with different maturities ranging from short-term to medium-term to long-term bonds (see also subheadings d and e).

Variable-rate bonds, also known as floating-rate bonds, have a variable coupon equal to the 3-month SBI market interest rate, which is referred to as the average rate method. The issuance of variable rate bonds aims to recapitalize banks by restoring their negative capital adequacy ratios. In cases when BI discontinues the issuance of 3-month SBI, the reference rate for variable rate bonds is changed to the 3-month Surat Perbendaharaan Negara (SPN).

In addition, domestic government bonds outstanding still include nontradable promissory notes that were issued under the banking liquidity support and guarantee program in response to the 1997/98 Asian financial crisis.

b. Treasury Bills (Surat Perbendaharaan Negara)

SPN, as they are referred to in the market, are Treasury bills, or short-term notes issued by the government and sold at a discount. The maximum maturity of SPN is 12 months. The government regularly offers 3-month and 12-month SPN at every auction.

c. Government Retails Bonds (Obligasi Negara Ritel)

Government retail bonds, or Obligasi Negara Ritel (ORI), are issues specifically designed for retail investors. ORI carry a minimum denomination of IDR5 million to allow small savers to also invest in government securities. ORI are issued in Indonesian rupiah only, with a fixed coupon, and a tenor of 3–5 years. ORI are sold to individual investors via selling agents in the primary market. In the secondary market, ORI are traded via banks and securities companies.

d. Government Retail Savings Bonds (Saving Bond Ritel)

Retail savings bonds, or SBR, have similar issuance purposes and denominations as ORI. However, these bonds have characteristics different from ORI in that they are nontradable, come with a floating interest rate determined by the Indonesia Deposit Insurance Corporation on a periodical basis, and have an early redemption feature. To ensure reasonable returns, the floating rate has a floor. SBR are sold to individual investors via selling agents.

e. Government Sharia Securities (Sukuk Negara or Surat Berharga Syariah Negara)

The legal basis for the issuance of Sukuk Negara, or SBSN, is Law Number 19 of 2008 concerning Government Sharia Securities. The law describes Sukuk Negara as sovereign securities issued based on Islamic principles, as evidence of the participation in SBSN assets, issued both in Indonesian rupiah and foreign currencies. The issuance of Sukuk Negara is not only for financing the State Budget (general financing), but also to finance the construction of projects allocated in the State Budget. The issuance of SBSN may be conducted directly by the government or by the SBSN Issuing Company, which is an onshore special purpose vehicle established by government regulation. Market participants and official MOF materials refer to government Sharia securities as both SBSN and Sukuk Negara. Sukuk Negara may be placed via public offer or private placement in domestic or international markets.

Since 2008, the Government of Indonesia, represented by the MOF, has issued seven types of Sukuk Negara with different maturities ranging from short to medium to long term, with a monthly or semiannual fixed coupon, and on a discounted basis. Both tradable and nontradable *sukuk* are issued for institutional and retail investors. The Government of Indonesia, with assistance from the National Sharia Board of the Indonesian Council of Ulama (DSN-MUI) has developed four *sukuk* structures by utilizing underlying assets in the form of fixed tangible assets and projects.

f. Government Project-Based Sharia Bonds (Project-Based *Sukuk*)

Project-based Sharia (PBS) bonds are Sharia-compliant government securities issued to secure financing for specific government projects that have been included in the government budget and which use said government project(s) as their underlying assets, utilizing an asset-to-be-leased agreement structure. PBS series are medium- to long-term *sukuk* with a fixed coupon payable semiannually and are offered at every auction.

g. Islamic Treasury Bills (Surat Perbendaharaan Negara-Syariah)

Surat Perbendaharaan Negara-Syariah (SPN-S), as they are referred to in the market, are Islamic Treasury bills, being short-term notes issued by the government and sold at a discount. Currently, the only maturity of SPN-S is 6 months. They have regularly been offered at every auction since February 2013.

h. Government Retail *Sukuk* (Sukuk Ritel)

Retail SBSN, or retail *sukuk*, are government Sharia bonds aimed at individual investors who must be Indonesian citizens. Retail SBSN are sold through selling agents—typically brokers—with a minimum denomination of IDR1 million and a maximum denomination of IDR5 billion. SBSN are issued in Indonesian rupiah only, with a fixed coupon payable monthly, and a tenor of 3.0–3.5 years. Retail SBSN terms and conditions are subject to revision in the future.

i. Government Savings *Sukuk* (Sukuk Tabungan)

Similar to retail *sukuk* in purpose and denomination, Sukuk Tabungan carry slightly different features such as being nontradable and having an early redemption option. Sukuk Tabungan are sold to individual Investors via selling agents (brokers).

j. Hajj Funds Sukuk (Sukuk Dana Haji Indonesia)

SDHI are *sukuk* issued to cater to the mutual needs of the MOF to finance the State Budget and the Ministry of Religious Affairs to place Hajj Funds. SDHI are nontradable *sukuk* with a medium- to long-term tenor and a fixed coupon payable monthly.

k. Government Debt Securities in Foreign Currencies

The Government of Indonesia also issues SUN denominated in foreign currencies in international markets, pursuant to Regulation Number 137/PMK.08/2013 regarding Sale and Buyback of Sovereign Debt Securities in Foreign Currency in the International Market, which superseded earlier regulations as amended by Regulation Number 264/PMK.08/2015. SUN may be sold in international markets through private placements or book building exercises (see also section E in this chapter).

Among these foreign-currency-denominated bonds, the government has launched US dollar global conventional bonds, euro-denominated bonds, and yen-denominated samurai bonds (bonds issued in Japan by a foreign issuer). The issuance of samurai bonds is subject to Regulation Number 41/PMK.08/2012 of the Minister of Finance concerning State Debt Instruments Sale on the Primary Market in Yen Denomination in Japan, as amended several times by Regulation Number 46/PMK.08/2016.

l. Government Sharia Bonds in Foreign Currencies

Similar to conventional government debt securities, government Sharia bonds may also be placed in international markets in foreign currencies. Such issuance is prescribed in the Regulation of the Finance Minister Number 119/PMK.08/2011 on the Issuance of Foreign Government Sharia Securities in the International Primary Market, which amended earlier regulations. Indonesia has issued USD-denominated global *sukuk.*

2. Instruments Issued by Bank Indonesia

BI issues its own debt securities, separately from the government, in support of its open market operation as well as to provide liquidity management tools for financial institutions. Since the tenor of BI instruments is limited to 1 year, the details are reviewed in section C.

3. Municipal Bonds

Municipal bonds are issued by a province or district government, typically for the financing of public utilities projects. The MOF issued regulations on the issuance of municipal bonds as far back as 2007, and OJK has supported cities and regions to access the capital market for such larger projects, instead of relying on bank loans.

At present, West Java province is the first local government to consider issuing municipal bonds. The Asian Development Bank has been providing technical assistance for this pilot issuance. Municipal bonds require the approval of OJK, similar to other public offers (see Chapter II.F for details).

4. Bonds, Notes, and *Sukuk* issued by the Corporate Sector

The issuance of corporate bonds, notes, and *sukuk*, which are typically referred to as Sharia bonds, is common in Indonesia. The number of bonds, *sukuk*, and ABS listed on IDX in 2015 was 55 issuances from 38 listed companies. Corporate bonds may only be listed on IDX if issued through a public offering. A fair volume of corporate bonds and notes are issued to specific investors via private placements.

a. Corporate Bonds and Medium-Term Notes

Corporate bonds and notes are typically issued by banks, finance companies, and other corporates as straight bonds or subordinated debt, in the case of financial institutions.

The issuance of corporate notes via MTN programs is common in Indonesia, although typically limited to private placements since MTN programs may not be listed in IDX under current regulations. As of December 2016, KSEI was safekeeping notes for its participants issued under 224 active MTN programs.

Most corporate bonds and *sukuk* are issued via public offerings under the shelf-registration concept (see also section E in this chapter). At the end of June 2016, 102 listed issuers accounted for 425 outstanding corporate debt issues or series denominated in Indonesian rupiah and a further 3 bond series denominated in US dollars.[20]

b. Corporate *Sukuk* and Their Types

Corporate *sukuk*, or Sharia bonds, are debt-like instruments issued in accordance with Islamic principle. They are issued by both conventional and Sharia banking institutions, as well as corporates, to tap the large Islamic finance market segment and address the needs of investors focused on or interested in assets that follow Islamic principles, such as Sharia investment funds (see Chapter VIII for details).

In 2015, 16 corporate *sukuk* series were issued with a total value of IDR3.3 trillion. Also in 2015, four series of corporate *sukuk* matured, which were valued at IDR484 billion, bringing the number of outstanding corporate *sukuk* to 47, which accounted for 11.4% of the 414 corporate debt issues outstanding.

The value of outstanding corporate *sukuk* totaled IDR9.9 trillion or 4.0% of total outstanding corporate issuances, up nearly 40% on the previous year.

[20] Indonesia Stock Exchange. *IDX FactBook 2016*. http://www.idx.co.id/Portals/0/StaticData/Publication/FactBook/FileDownload/20161025_FB-2016.pdf

Cumulatively, 87 corporate *sukuk* had been issued through 2016 (40 since 2010) with a total value of IDR16.2 trillion.

With a share of 62%, *sukuk ijarah* (underlying contract of sell and lease back) is the preferred issuance type for Sharia bonds; the remaining *sukuk* are issued using the *mudharabah* (profit sharing) type.[21]

c. Convertible Bond

Convertible bonds are debt securities that carry the right to exchange said debt securities for equity in a listed issuer according to conditions prescribed at the time of issuance of the debt securities.

Convertible bonds, or debt securities containing rights to obtain shares, issued to the public require a credit rating, pursuant to Bapepam-LK Rule Number IX.C.11, which remains in force.

For general reference, the last convertible bond matured in 2015, and the Indonesian market has not seen another convertible bond issued since then.

5. Asset-Backed Securities

ABS in Indonesia are a participating unit of a collective investment contract with a portfolio that consists of financial assets comprising

- claims arising from commercial paper,
- credit card receivables,
- future receivables,
- loans including homes or apartment mortgages,
- debt securities guaranteed by the government,
- credit or cash flow enhancement, and
- equivalent financial assets and other financial assets related to the aforementioned financial assets.

The collective investment contract of an ABS is an agreement signed by an investment management company and a custodian bank. The contract binds the holder of the participating unit(s) and authorizes the investment management company to manage the collective investment portfolio while the custodian bank provides collective custody services. ABS offered to the public require an ABS disclosure document and the submission of a Registration Statement to, and its approval by, OJK.

While there are two types of ABS, fixed cash flow and variable cash flow, the fixed cash flow ABS in practice functions like a debt instrument in that it pays a fixed rate of interest based on the generation of income from the underlying portfolio of assets. The applicable regulation for ABS are contained in the original Bapepam-LK Rule Number IX.K.1 on Guidelines for Asset Backed Securities Collective Investment Contracts and supplementary regulations. This was supplemented in 2014 by the OJK Regulation concerning Guidelines on Issuing and Reporting Asset-Backed Securities in the Form of Participation Certificates for the Purpose of Secondary Mortgage Financing, and other regulations.

[21] For further information on the breakdown of conventional and Sharia bonds, please refer to the *OJK Annual Report 2015* available at http://www.ojk.go.id/id/data-dan-statistik/ojk/Documents/Pages/Laporan-Tahunan-OJK-2015,-Memacu-Pertumbuhan-Ekonomi-Melalui-Sektor-Jasa-Keuangan-Yang-Kontributif,-Stabil-dan-Inklusif/OJK%20Annual%20Report%202015.pdf

At the end of June 2016, seven listed issuers had issued ABS that were subsequently listed on IDX with a combined outstanding value of nearly IDR2 trillion.

C. Money Market Instruments

Money market instruments are short(er)-term debt instruments, typically issued by the Government of Indonesia as well as BI. They may also be issued by the private sector in the form of commercial paper. Money market instruments generally have maturities of 1 year or less.

1. Instruments Issued by the Government

a. Treasury Bills

SPN, widely known as Treasury bills, represent a short-term note issued by the government and sold at a discount. Their maximum maturity is 12 months. The government regularly offers 3-month and 12-month SPN at every auction.

b. Islamic Treasury Bills

SPN-S, similar to SPN, are issued by the government and sold at a discount, and have a maximum maturity of 12 months. The government issued the first SPN-S in August 2011 with a 6-month tenor and has been issuing 6-month SPN-S regularly since February 2013.

2. Instruments Issued by Bank Indonesia

BI issues money market instruments to manage its open market operation and to provide liquidity management tools for financial institutions. BI issues both conventional and Sharia instruments in Indonesian rupiah as well as foreign currencies (mainly US dollars) as the need arises.

a. Bank Indonesia Certificates (Sertifikat Bank Indonesia)

SBI were originally issued in two tenors, 28 days and 3 months. Prior to the advent of Treasury bills, SBI were the main tool used by BI for open market operation and to control liquidity in the banking system. Until recently, SBI were the most actively traded money market instrument in Indonesia.

Since June 2010, SBI have been auctioned on a monthly basis with maturities of 28, 91, and 182 days. In addition, BI issues 28-day Sharia-compliant SBI on a monthly basis (see section 2.b). In November 2010, BI stopped issuing 3-month SBI and began offering term-deposit instruments to absorb excess bank liquidity. In February 2011, BI announced that it would no longer issue SBI with maturities of less than 9 months.

Starting in January 2017, BI discontinued issuance of SBI. SBI were replaced by SDBI with maturities of 9 months and 12 months, while SDBI with maturities of 3 months and 6 months will be replaced in 2017 by SBN. This strategy is to align BI issuance with the BI mandate stated in the State Treasury Law No. 1 of 2004, which stipulates the use of government securities as underlying instruments in BI's monetary operation implementation.

b. Bank Indonesia Sharia Certificates (Sertifikat Bank Indonesia Syariah)

BI issues Sertifikat Bank Indonesia Syariah (SBIS) as short-term securities based on Sharia principles and denominated in Indonesian rupiah. The basis for SBIS issuance was set forth in BI Regulation Number 10/11/PBI (dated 31 March 2008) concerning Bank Indonesia Sharia Certificates, and its supplementary circular letter on the same regulation.

SBIS make use of the *ju'alah* agreement (contract of service) as the underlying transaction, and are denominated in units of IDR1 million with a minimum tenor of 1 month and a maximum tenor of 12 months. SBIS are issued in scripless form through an auction mechanism and are nontradable in secondary markets. SBIS may be collateralized to BI (e.g., in repo transactions or through the BI discount window). As such, SBIS are primarily instruments intended for banks and other financial institutions. SBIS auctions for maturities of 9 months and 12 months take place once a month.

c. Bank Indonesia Foreign Exchange Bills

BI started issuing Bank Indonesia Foreign Exchange Bills (BI FX Bills) in December 2015, which are short-term debt instruments denominated in foreign currencies (mainly US dollars) and categorized as tradable securities. The objective of BI FX Bill issuance is to strengthen FX reserves and support the deepening of the domestic financial market in order to promote Indonesian rupiah exchange rate stability.

BI FX Bills are issued regularly via auction in a variety of tenors ranging from 1 month to 12 months. Auction details are available on a dedicated BI web page.[22]

3. Issued or Used by the Corporate Sector

Corporate money market instruments in the Indonesian market are typically either commercial paper or repo agreements.

a. Commercial Paper

Commercial paper refers to short-term securities in the money market with no guarantee, issued at a discount by corporates and financial institutions. Commercial paper is typically used for the funding of purchased inventory or to manage working capital.

Commercial paper is mostly purchased by financial institutions because the face value is too large for private investors. Since the maturity of commercial paper does not exceed 12 months, and it tends to be used as a short-term financing tool, the offering of commercial paper was excluded from the obligation to submit a Registration Statement to OJK.

Commercial paper grew rapidly in the early 1990s as they offered a substitute for bonds. Since commercial paper programs can be rolled over almost automatically, they are economically the same as floating-rate bonds, but involve less cost and effort.

[22] See http://www.bi.go.id/en/moneter/SBBI_Valas/Default.aspx

b. Repurchase Agreement

Corporate and financial institutions, particularly banks, use repo transactions to maximize the utilization of their holdings in eligible debt securities. Banks transact with BI to obtain liquidity or deposit excess cash in exchange for debt securities (reverse repo) that may be used according to the needs of the counterparty.

D. Segmentation of the Market

Table 3.1 provides an overview of the outstanding value of debt securities in the Indonesian bond market by type of instrument as detailed in section B, including government securities and corporate bonds and notes, both conventional and Sharia-compliant.

Table 3.1: Segmentation of the Market—Outstanding Value of Indonesian Rupiah Debt Securities in Indonesia by Instrument Type

Issuer Type	Type of Instrument	Conventional or Sharia	Outstanding Amount (IDR billion)	% of Total Outstanding
Government	SUN	Government Debt Securities	1,486,530.25	58.5%
	SBSN	Government Sharia Securities	240,593.50	9.5%
	SPN	Treasury Bills	41,040.00	1.6%
	SPN-S	Islamic Treasury Bills	7,700.00	0.3%
	SUN FCY	Treasury Bonds in a foreign currency	639,186.52	25.5%
	Sukuk Negara FCY	Government Sharia Securities in a foreign currency	127,642.00	5.0%
Bank Indonesia	SBI	Bank Indonesia Certificates	105,377.00	69.2%
	SDBI	Certificate Deposit Bank Indonesia	46,985.00	30.8%
Corporate	Bonds	Corporate bonds (time to maturity > 1 year)	223,210.86	71.0%
	Notes	Corporate notes (time to maturity < 1 year)	77,090.00	24.5%
	ABS	Asset-backed securities (fixed rate)	2,808.42	0.9%
	Sukuk	Corporate Sharia bonds	11,428.00	3.6%

Notes: Data as of the end of December 2016; percentages valid for each issuer type.
Sources: For government debt securities, data on tradable securities are from http://www.djppr.kemenkeu.go.id\; for corporate bonds, data are sourced from CTP-PLTE; for Bank Indonesia issuances, Bank Indonesia data are used.

Detailed information on the outstanding value of bonds, bills, and *sukuk*; new issuances per period; and specific statistics on government securities in the Indonesian bond market can also be found on the websites of *AsianBondsOnline*, BI, IDX, and KSEI. Statistical information on the Indonesian bond market is also included in the annual *IDX Factbook*[23] and OJK's Annual Report.[24] Both publications provide end-of-year data and period comparisons, detail issuance and trading volumes and trends, and list the market participants and their own activities relative to the bond market. Appropriate links are also provided in Chapter VII and Appendix 3.

E. Methods of Issuing Bonds and Notes (Primary Market)

The Government of Indonesia issues securities—both conventional and Sharia—through public offerings when denominated in Indonesian rupiah, while often using private placements when issuing foreign-currency-denominated bonds in international markets. Publicly offered government debt securities (Sukuk Negara) are typically issued via auction, including for the reopening of existing government debt securities series. BI uses the auction method exclusively when issuing SBI and FX Bills to the constituents of the interbank money market.

In contrast, corporate issuers typically use the book building method to publicly issue corporate bonds and notes, but may also privately place their debt securities to selected investors in the Indonesian market. Corporate issuance in Indonesia of foreign-currency-denominated debt securities is not common. As of 30 December 2016, the outstanding amount for corporate bonds denominated in foreign currency came to only USD67.5 million.

The individual methods of issuance employed by the various issuer types are explained in further detail in this section.

1. Government Securities

The Government of Indonesia, represented by the MOF, has been issuing government securities—conventional and *sukuk*—through a number of methods in both the domestic and international markets. In this context, BI acts as the agent of the government to facilitate the auction process, while international placements of government bonds are handled by a panel of selling agents. This section provides an overview of the different methods used for these instruments.

a. Auction of Government Securities

An auction of government securities may be conducted using competitive or noncompetitive bidding processes, which depend on the nature of the bidders. Auction participants include the Primary Dealers (see also section M in this chapter) or auction participants, the Indonesia Deposit Insurance Corporation, and BI.

Conventional debt securities (ON and SPN) are auctioned through Primary Dealers, while Sukuk Negara (PBS and SPN-S) are auctioned through auction participants. Auction participants for Sukuk Negara consist of banks and securities companies. These auction participants are subject to different regulations and obligations from those applicable to Primary Dealers for conventional securities auctions. However, there are no differences in terms of

[23] Indonesia Stock Exchange. *IDX FactBook 2016*. http://www.idx.co.id/en-us/home/publication/factbook.aspxhttp://www.idx.co.id/Portals/0/StaticData/Publication/FactBook/FileDownload/20161025_FB-2016.pdf

[24] Otoritas Jasa Keuangan. *Annual Report 2015*. http://www.ojk.go.id/id/data-dan-statistik/ojk/Documents/Pages/Laporan-Tahunan-OJK-2015,-Memacu-Pertumbuhan-Ekonomi-Melalui-Sektor-Jasa-Keuangan-Yang-Kontributif,-Stabil-dan-Inklusif/OJK%20Annual%20Report%202015.pdf

method, mechanism, system, and procedures between the auction mechanism for conventional and *sukuk* auctions.

i. Competitive Bidding

The Government of Indonesia uses a competitive auction process to issue ON and PBS, and SPN and SPN-S to auction participants with BI providing its facilities to conduct the auction and acting as the agent for the government. BI itself does not act as an auction participant in the competitive bidding process.

The auction conduct is prescribed in MOF Regulation Number 43/PMK.08/2013 on the Auction of Government Debt Securities in Rupiah and Foreign Denominated in Domestic Primary Market, as amended with MOF Regulation Number 203/PMK.08/2015. However, the auction of SBSN in the domestic primary market is regulated by MOF Regulation Number 11/PMK.08/2009, as amended with MOF Regulation Number 05/PMK.08/2012.

The MOF will announce an auction plan for each auction, which includes the target amount(s) and the type of instruments and their issuance style (see also under b below). The announcements are made through the MOF website and other channels.[25]

Competitive bidding auctions use the multiple price method, where successful bids are awarded at the yield proposed by the bidders. Auction bids may be submitted by institutional investors, as well as individual investors, but only the actual auction participants may submit auction bids to BI. Hence, nonparticipants need to submit their bids to auction participants prior to auction.

Auctions are conducted the first Tuesday of every month, opening at 10 a.m. and closing at 12 noon (Jakarta time). Auction results will be announced on the same day, with settlement prescribed for the following Thursday (T+2).

ii. Noncompetitive Bidding

At every auction of ON and PBS, a portion of the issuance is set aside for noncompetitive bids. BI can only submit noncompetitive bids for SPN, while the Indonesia Deposit Insurance Corporation (see section M in this chapter) may only submit noncompetitive bids for ON. However, based on MOF Regulation Number 203/PMK.08/2015 (the first amendment of MOF Regulation Number 43/PMK.08/2013), the Primary Dealers as auction participants may also submit noncompetitive bids if only for SUN.

The amount reserved for noncompetitive bids typically ranges from 30% to 50% of the total anticipated auction volume. The actual percentage will be announced by the MOF in the auction plan.

Successful bidders will pay a yield according to the weighted average yield of the awarded competitive bids.

[25] For a sample auction announcement, please see http://www.mof.go.id/sites/default/files/SPeng_240714_103.pdf

b. Reopening of Government Debt Securities and Sukuk Negara

The MOF is using the issuance style of reopening for government benchmark bonds in order to ensure liquidity for those widely accepted instruments at similar conditions to the original issuance. A reopening may be done for bonds with remaining tenors of under 1 year to 20 years. For Sukuk Negara, the government has not yet established a benchmark series and therefore the reopening of a Sukuk Negara series issued through auction is to increase their supply in order to improve liquidity in the secondary market.

Reopenings are carried out via auction for both competitive and noncompetitive bids, are facilitated by BI as an agent for the government, and tend to have an issuance amount corridor with an expected minimum and maximum amount of bids.

c. Book building for Government Retail Bonds and Retail Sukuk Negara

The MOF issues retail bonds and retail *sukuk* through book building using its network of selling agents. Any Indonesian citizen can propose an offer through the book building process within the public offering period (usually 2–3 weeks). One can buy retail bonds at a minimum amount of IDR5 million, with multiples of IDR5 million up to the maximum amount of IDR3 billion (for ORI and SR) and IDR5 billion (for SBR and Sukuk Tabungan). Currently, the government is utilizing the book building method only for issuing retail securities (conventional and *sukuk*) and foreign-currency-denominated securities (conventional and *sukuk*).

d. Private Placement

The government may issue and offer for sale—typically in international markets, but potentially in Indonesia as well—SUN and SBSN denominated in foreign currencies through the private placement method. Such private placements are based on an Offering Circular and are placed through a panel of selling agents appointed by the government through the MOF. A given issuance will require at least two selling agents from the panel to be involved. Selling agents are typically investment banks.

In addition, such placements require the appointment of a fiscal agent appointed to carry out the registration of ownership (registry) and perform the interest and SUN principal payments in foreign currencies. The Finance Minister may appoint an international financial institution or agency to carry out that function (as well as clearing and settlement) and/or as a trustee.

A domestic private placement involves the government and investors as counterparties. Bids from investors are submitted through Primary Dealers who will negotiate with the government on a bilateral basis, on behalf of their investor’s interest, for instrument series, size, and yield. Issuance via the private placement method is usually only available for off-the-run SUN series. The government can accept or reject the offer from Primary Dealers based on the negotiation.

Based on MOF Decree Number 239/PMK.08/2012, the issuance of Sukuk Negara through a private placement does not require selling agents. However, there are some limitations in terms of minimum bid size:

- IDR250 million for investors who bid for a series of Sukuk Negara denominated in Indonesian rupiah, and
- USD100 million for investors who bid for a series of Sukuk Negara denominated in a foreign currency.

2. Instruments Issued by Bank Indonesia

All instruments issued directly by BI are issued using the auction method. BI publishes its open market operation auction calendar—and later the auction results—on its website, typically for a time frame of 1 month.

The participants at auction may differ depending on the type of instrument. For SBI and FX Bill auctions, banks and other financial institutions are the participants; in turn, for SBIS, the participants are mostly Sharia commercial banks, Sharia divisions of other banks or corporates, or brokers acting on their behalf since these institutions may not be able to purchase conventional instruments.

3. Bonds and Notes Issued by the Private Sector (Corporate Bonds)

The issuance of corporate bonds, notes, or *sukuk* may be done via a public offer or a private placement. Conducting a public offer is a prerequisite to have debt securities listed on IDX. The private placement market is presently not covered under the purview of OJK (see also Chapter II.F).

a. Public Offering

The issuance of corporate bonds via a Public Offering is subject to the approval of OJK. Issuers must submit a Registration Statement and supporting documents (see Chapter II.F for a detailed description of this regulatory process).

A Public Offering refers to an offering of securities that takes place within a certain time and within specified amounts, either within the territory of Indonesia or to Indonesian citizens abroad, and is offered either through the mass media or otherwise to more than 100 persons, or results in sales to more than 50 persons. A Public Offering within the territory of Indonesia includes both domestic and foreign issuers, as well as offerings to both domestic and foreign investors, in compliance with disclosure principles. Regulations regarding Public Offerings also apply to offerings by domestic issuers to Indonesian citizens abroad. This provides necessary protection to Indonesian investors overseas in the case of securities offered by domestic issuers.

For details on the regulatory process for the issuance of (debt) securities via a public offer, please refer to Chapter II.F.

b. Shelf Registration

Shelf registration, also called a Sustainable Public Offering, is a Public Offering for conventional debt securities and/or *sukuk*, which is done continuously to enable the issuer or public company with a good performance to make a public offering of debt securities and/or *sukuk* within a certain period of time.

A shelf registration needs to be completed within 2 years of the effectivity of the Registration Statement, with certain criteria to be fulfilled by both the issuer and the securities. Shelf registration is covered under OJK Regulation Number 36/POJK.04/2014 concerning Shelf Registration.

Of the 55 new debt securities listed on IDX in 2015, 49 issuances were made using the shelf-registration method.

c. Private Placement

Under prevailing Indonesian regulations, issuers may choose to issue their debt securities in the form of a private placement. Private placements are defined as an offer of securities to a maximum of 100 parties with purchase by a maximum of 50 buyers. No official marketing or offer material may be made available except to the intended maximum number of investors. No advertising, public communications (print, TV, and online ads), or general marketing may be undertaken.

Should any of the above stipulations be breached, the bond, note, or *suku*k issue in question will automatically be considered a public offer, and be subject to all applicable regulations as well as full approval processes and supervision by OJK. Please see also Chapter II.F for further information in this context.

Private placements in Indonesia are subject to market practices that have evolved in the absence of specific regulations. Issuers are expected to publish to potential or targeted investors an “infomemo,” which is an abbreviated version of an information memorandum used in international bond markets. The format of the infomemo is standardized and may be amended with clauses or separate provisions already accepted in the market. The typical infomemo is compiled in Bahasa Indonesia, but depending on the target investor universe, it may also or exclusively be provided in English.

Presently, the issuance of private placements and their related practices, as well as the initial and continuous disclosure, are not subject to approval or supervision by OJK and, hence, is exempted from the obligation to submit a Registration Statement to OJK and, consequently, exempted from all offering requirements under OJK rules. However, private placements are not able to be listed on the IDX since its regulations and listing rules specify the need for listed securities to have been offered to the public.

At the time of the compilation of the Indonesia Bond Market Guide, OJK was in the process of studying a potential regulatory framework for private placements, with the results and a possible announcement expected in 2017.

d. Note Issuance Programs

Note issuance programs, typically MTN programs, of major corporate issuers are typically focused on international markets.

At the same time, the private placement market in Indonesia has also featured MTN-type note issuance programs for some time now. As such, professional market participants would principally be familiar with the concept and practices of note issuance programs.

In addition, KSEI is already acting as depository for some note issuance programs that are issued as private placements outside the supervision of OJK. But in many private placement MTN programs cases, the language used for the infomemo and supporting documentation is Bahasa Indonesia.

F. Governing Law and Jurisdiction (Bond and Note Issuance)

The governing law and jurisdiction for a bond or note 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 or note were issued under the laws of the place of issuance.

Article 1338 of the Indonesian Civil Code recognizes the principle of freedom of contract. Contracting parties can determine the jurisdiction of the governing law, which is not restricted to Indonesian law. There is, however, a close connection to the subject of language of such contracts or agreements (see section G).

In any case, the actual use of governing laws or jurisdictions other than those of Indonesia may be subject to clarification or legal advice from a qualified law firm, as may be necessary.

G. Language of Documentation and Disclosure Items

It is envisaged that most of the ASEAN+3 markets participating in AMBIF will be able to accept the use of a common document in English. However, some markets may require the submission of approval-related information in their prescribed format and in the local language. In such cases, concessions from these regulatory authorities for a submission of required information in English, in addition to local language and formats, may be sought.

The content of the Registration Statement to be submitted to OJK in the context of the issuance of debt securities via a public offering has to be in Bahasa Indonesia (see Chapter II.B). Supporting documents may be in another language but would have to be accompanied by a translation into Bahasa Indonesia by a sworn translator.

Since the private placement market is not covered under existing regulations, debt securities issuance via private placement is usually conducted through business-to-business agreements. Hence, the use of issuance documents in English would depend on the provisions in such an agreement.

Indonesia passed Law 24 of 2009 on National Flag, Language, Emblem and Anthem, typically referred to as the Language Law, which stipulated that any contract or agreement involving an Indonesian party would have to be drawn up in Bahasa Indonesia, in addition to a foreign language. Implementation rules for Law 24 of 2009 have not yet been published. The Minister of Law at the time provided a statement that the absence of a contract or agreement version in Bahasa Indonesia would not affect the validity of said contract or agreement, suggesting that a set of documents in English, for example, would be acceptable on its own. This was subsequently contested in a district court, which ruled that the lack of a Bahasa Indonesia version rendered the contract in question null and void. This court decision is presently under appeal.[26]

[26] The information provided was compiled from a number of sources in the public domain. However, at this point in time, it is not clear whether this ruling would also apply to contracts agreed between issuers and professional investors, which are not currently regulated by OJK.

H. Registration of Debt Securities

In some jurisdictions, a registration of bonds issued in the domestic market with a designated registration place, such as an SRO, market association, or pricing agency ensures the availability of reference pricing and general bond information for market participants at large. Some professional investors, such as mutual and pension funds, require investment assets to be officially registered or listed in order to satisfy governing prudential regulations.

In Indonesia, such a concept of registration for the purposes of access to information or determination of a fair value is not required. Publicly issued debt securities are typically listed on IDX, all trades on IDX and in the OTC market are reported to a central reporting mechanism (see Chapter IV.C), and the Indonesia Bond Pricing Agency (see section J in this chapter) regularly provides reference prices for all debt securities issued in the Indonesian market, thereby fulfilling all the requirements intended by a separate bond registration concept.

At the same time, the term “registration” is extensively used in the Indonesian bond market. Debt securities intended to be offered to the public need to be registered with OJK, using a Registration Statement. In addition, debt securities to be settled in the Indonesian market need to be registered with KSEI, including government securities that investors hold through their securities accounts at KSEI. Furthermore, selected Capital Market Supporting Institutions and Professionals are required to be registered with OJK to service issuers, investors, and intermediaries.

For details on the OJK approval process of the Registration Statement, please see Chapter II.F, while the registration or licensing of Capital Market Supporting Institutions and Professionals is further explained in Chapter II.I.

I. Listing of Debt Securities

Issuers can list their debt securities issued in Indonesia on IDX. Current listings include government and corporate issuances, both conventional and Sharia bonds, as well as ABS. A listing on IDX is not mandatory, but the listing on IDX requires the issuance of debt securities to be made via a public offer only, pursuant to the Capital Market Law. The issuer of a public offering has the obligation to disclose in the prospectus whether the securities will be listed on the exchange, regardless of whether the listing is targeted for the time of issuance or a later date.

A total of 220 SBN series were listed on IDX throughout 2016, with a combined outstanding value of approximately IDR484.6 trillion (USD200 million). In addition, 86 new conventional corporate bonds, *sukuk*, and ABS were listed in 2016, with an issuance value of IDR114.7 trillion (USD47.5 million), bringing the total number of debt securities listed on IDX to 601 at the end of 2016. Corporate bonds dominated the listings with 515 series in rupiah (with a cumulative value of IDR314.6 trillion) and 2 series denominated in US dollars (with a cumulative value of USD67.5 million).

1. Listing for Public Offers

As mentioned above, the listing of securities in Indonesia requires the issuance of said securities to have been made via a public offer. This is prescribed in Bapepam LK Rules Section IX (see also Chapter II.C), as well as in IDX Decree SK-024/LGL/BES/XI/2004- I.F.1: Debt Securities Listing.

The listing of securities, including debt securities, is subject to IDX approval. Issuers wishing to list their debt securities on IDX will need to observe the IDX Listing Rules.[27] The Listing Rules for debt securities are distinct from those for equity securities and consist of a number of separate provisions that are available for viewing and download from the IDX website.[28] Individual types of debt securities have separate provisions among the Listing Rules. The Listing Rules for debt securities on IDX, which date back to 2004, were issued by the then Surabaya Stock Exchange and remain in force unless specifically superseded.

Issuers wishing to list their debt securities on IDX will have to check their eligibility to list and the eligibility of the debt securities to be listed against the IDX listing criteria for debt securities, defined in IDX Rule Number I.F.1:

(i) satisfaction of all general security listing rule as set out in Security Listing Rule Number I.A on General Security Listing Rules Number I.A.1 on Preliminary Security Listing Agreement and Number I.A.2 on Initial Security Listing;
(ii) issuer being in the form of a legal entity;
(iii) having been in operation for at least 3 years;
(iv) having equity of at least IDR20 billion;
(v) earning operating profits within the last year;
(vi) the Registration Statement having been certified as effective;
(vii) the financial statements for the last 3 consecutive years having been audited by a public accountant registered with OJK and qualified opinion being given to the said financial statements; and
(viii) the security being rated as BBB– (investment grade) by a credit rating agency registered with OJK.

Among the general listing criteria, as defined in Listing Rule Number I.A, IDX provides for a wide range of debt securities eligible for listing, including

(i) debentures that are either convertible or not or can be exchanged for equity securities;
(ii) debentures denominated in Indonesian rupiah or in foreign currencies; and
(iii) debentures issued by private enterprises, state-owned enterprises, regional government-owned enterprises, cooperatives, central government or regional or local governments, as well as other parties.

Listing is also possible for Indonesian depository receipts as well as for other securities that would be declared eligible for listing by OJK.

The individual steps of the process for debt securities listing on IDX are explained in further detail below.

Step 1—Submission of (Preliminary) Listing Application to Indonesia Stock Exchange

The issuer, or the appointed (lead) underwriter, will need to submit to IDX an Application of Debt Securities Listing, which is expected to follow the format prescribed in Appendix I.F.1-1 to IDX Rule Number I.F.1 (Debt Securities Listing).

[27] In Bahasa Indonesia, the terms “regulations” and “rules” have the same meaning (*peraturan*). Hence, it is possible to come across both terms for the same regulatory prescription in official documentation and public domain material. For consistency, and to distinguish OJK regulations, the term “‘rules”’ is used in the Indonesia Bond Market Guide for Bapepam and Bapepam-LK regulatory issuances, and in the context of IDX administrative instruments.
[28] See http://www.idx.co.id/en-us/home/regulation/listingregulations.aspx

A prerequisite of this step is that the issuer will either have obtained a Declaration of Effectiveness of the Registration Statement from OJK (see Chapter II.F for the approval process preceding this). In case a registration with OJK is still pending, the issuer would submit a preliminary listing application and would have to enter into and execute a Preliminary Securities Listing Agreement with IDX to commence listing proceedings.

If so executed, the Preliminary Listing Agreement with IDX becomes one of the requirements to complete the OJK checklist of documents related to the Registration Statement and must be submitted to OJK once completed. While this is not mentioned in the applicable IDX Rule, it is a prescribed OJK regulation since it is part of the current public offering process requirements.

The listing application will need to indicate the name and type of the debt securities to be listed, and the type of coupon or discount the debt securities will carry. The issuer should also indicate in the application their targeted listing date. In addition, the application needs to be accompanied by the following documents:

(i) one copy of the Certificate of Declaration of Effectiveness,
(ii) one copy of the Trust Agreement,
(iii) one copy of the investment grade issued by a security rating institution;
(iv) report of the result of initial public offer in accordance with the Appendix to Bapepam Regulation IX.A.2 on the Procedure of Registration for the Purpose of Public Offer,
(v) five copies of the Jumbo Certificate of Debt Security,
(vi) five copies of the prospectus, and
(vii) the Issuer's Letter of Statement in the form of Appendix I.A.2-1.

Step 2—Review of Application and Approval by Indonesia Stock Exchange

The process for the application review in the context of a listing application is prescribed in IDX Securities Listing Rule Number I.A.2 (Initial Securities Listing), which is available on the IDX website. Issuers whose stock or debt securities are already listed would face a shortened process of evaluation for any (new debt securities) to be listed.

IDX will review the listing application against its listing criteria and requirements, and notify the issuer within 2 exchange days after the securities listing application is received of any missing documents or information it requires to assess the application.

In turn, the issuer (or its agent) will need to supply the missing document or information within 2 exchange days after receiving such notice from IDX. A refusal to provide additional information, or a delay in supplying the information, may result in the postponement or refusal by IDX to process the application.

Once the listing application has been submitted to IDX, the issuer is required to deposit the initial listing fee in accordance with the provisions of Securities Listing Rule Number I.A.5 on Initial Listing Fee and Value-Added Tax (VAT) to IDX's account at the latest 3 exchange days before the listing date. Details of the listing fees and applicable taxes may be found in Chapter VI.

If the listing application and related documents are considered complete, and IDX is satisfied with the information provided, it will issue a Securities Listing Approval Letter—both a physical letter and an email notification—to the issuer at the latest within 2 exchange days after the complete documents have been received and the initial listing fee has been paid. As the National Numbering Agency for Indonesia, KSEI will issue an International Securities Identification Number for the debt securities to be listed.[29] IDX will issue its own securities code, referred to in the market as "short code," for the debt securities on its markets.

Step 3—Actual (Effective) Listing

Once the Securities Listing Approval Letter has been issued to the issuer, IDX will announce the actual securities listing via a notice on its website no later than the following exchange day. The announcement constitutes the actual listing being effective. Debt securities trading may commence on the day after listing.

2. Listing of Debt Issuance Programs

The listing of debt issuance programs on IDX is possible and is treated like any other debt securities listing, with the listing of subsequent tranches under a program only needing a shortened listing process. (Please also see section E in this chapter for details on debt issuance programs and shelf-registration.)

3. Private Placements

In contrast, the profile listing of debt securities issued via a private placement—that is, those aimed at the professional market participants in Indonesia or beyond—is not available under current regulations.

4. Other Listing Places

In principle, bonds, notes, and *sukuk* issued in the Indonesian market may also be listed on a listing place outside Indonesia. Some issuers may take the step of obtaining a profile listing, or an additional profile listing, of their bonds, notes, or *sukuk* in regional markets in ASEAN+3, with the intention to access different or larger investors universes in this manner. Given the fact that a listing in Indonesia is limited to publicly offered debt securities only, issuers of bonds, notes, or *sukuk* aimed at professional investors and issued through a private placement may choose to list their debt securities in another market in ASEAN+3 or beyond.

Even when bonds, notes, or *sukuk* issued in the Indonesian market are listed or registered for profiling in other markets, the settlement of said instruments would still occur in the Indonesian domestic market through KSEI.

The process of such listing is beyond the purview of OJK and would be subject to separate, applicable approvals and listing rules and regulations at the listing place.

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

Bonds, notes, and *sukuk* issued in the Indonesian bond market are typically traded in the OTC market, while trading on IDX is also possible. Trades are settled in KSEI regardless of the method of trading.[30] All trades in the Indonesian bond market are reported via a central reporting tool (see Chapter IV).

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[29] The allocation of an International Securities Identification Number (ISIN), which is defined under the ISO6166 standard for financial instruments including debt securities, is undertaken by a so-called National Numbering Agency, which is a market institution appointed by the financial market regulator in a given capital market. More information on ISIN and National Numbering Agencies is available at http://www.anna-web.org

[30] Exceptions apply to small private placements that are not intended to be traded.

1. Over-the-Counter Market

The vast majority of debt securities, including *sukuk*, are traded in the Indonesian OTC market. Trading is conducted directly between counterparties via phone or through standard international or proprietary bond trading platforms. Trades via intermediaries, such as banks or brokers, are also carried out.

Debt securities issued via private placement may only be traded in the OTC markets, since a listing (and subsequent trading on an exchange) of privately placed debt securities is presently not provided for in law or regulations.

2. Trading on Indonesia Stock Exchange

The trading of debt securities on IDX is limited, as is typical in bond markets in ASEAN+3. Trades on IDX may only be executed by exchange members who have specifically been appointed for the trading of debt securities, either for their own account or for their customers.

3. Buyback of Indonesia Government Securities

While this is not a method of trading debt securities between two securities market counterparties, the buyback of government securities (only for ON) is offered by the MOF as an active alternative for market participants to sell their eligible holdings. The significance lies in that these buybacks occur directly between the securities holder (or their agent) and the MOF, and are booked through the MOF Dealing System for those active market participants also recognized as Primary Dealers, or directly via phone with the dealing room of the MOF Department of Budget Finance and Risk Management. See Chapter IV for additional information.

K. Bond and Note Pricing

IBPA—owned in equal shares by IDX, KPEI, and KSEI—provides reference pricing of debt securities issued in the Indonesian market, regardless whether these are traded OTC or on the exchange.

IBPA received its mandate subsequent to the issuance of Regulation Number V.C.3 regarding Bond Pricing Agency by Bapepam-LK (the predecessor of OJK) in September 2007. The regulation addressed the requirements on the establishment and obligations of a bond pricing agency as an institution conducting the valuation on debt securities, *sukuk*, and other securities in a way that would be objective, independent, credible, and accountable. At this point in time, IBPA is the only securities pricing agency recognized by OJK.

The pricing information (reference pricing) published by IBPA is referred to as fair market (reference) prices for the purpose of accounting by financial institutions and the daily determination of the net asset value for mutual funds and securities pricing within portfolio management institutions. A number of Bapepam-LK and MOF regulations require other financial market participants, including insurance companies, asset management companies, and pension funds and other financial institutions to utilize official securities prices provided by IBPA for the valuation of their portfolios. The applicable regulations relative to the functions of IBPA are shown in Figure 3.1.

Figure 3.1: Regulations Governing Securities Pricing Agency Obligations

Regulations	Topics	Sectors
Bapepam-LK Regulation No IV.C.2	Fair Market Value of Securities in Mutual Fund Portfolios	Mutual Fund
Ministry of Finance Regulation No 11/PMK.010/2011	Financial Health of Sharia Insurance & Reinsurance Companies	Insurance & Re-Insurance
Head of Bapepam-LK Regulation No PER-05/BL/2012	Financial Report Preparation & Investment Appraisal for Pension Fund	Pension Fund
Head of Bapepam-LK Decision No KEP-367/BL/2012	Financial Health of Insurance & Reinsurance Companies	Insurance & Re-Insurance
Ministry of Finance Regulation No 55/PMK.010/2012	Financial Health of Civil Servant Pension Fund Program Institution	Civil Servant Pension Fund Program
Financial Services Authority (OJK) Rules No 18/SEOJK.04/2013	Procedure of Loss Asset Value in Regards to The Use of Investor Protection Fund	Securities Investor Protection Fund
Ministry of Finance Regulation No 134/PMK.08/2013	Primary Dealers	Primary Dealers

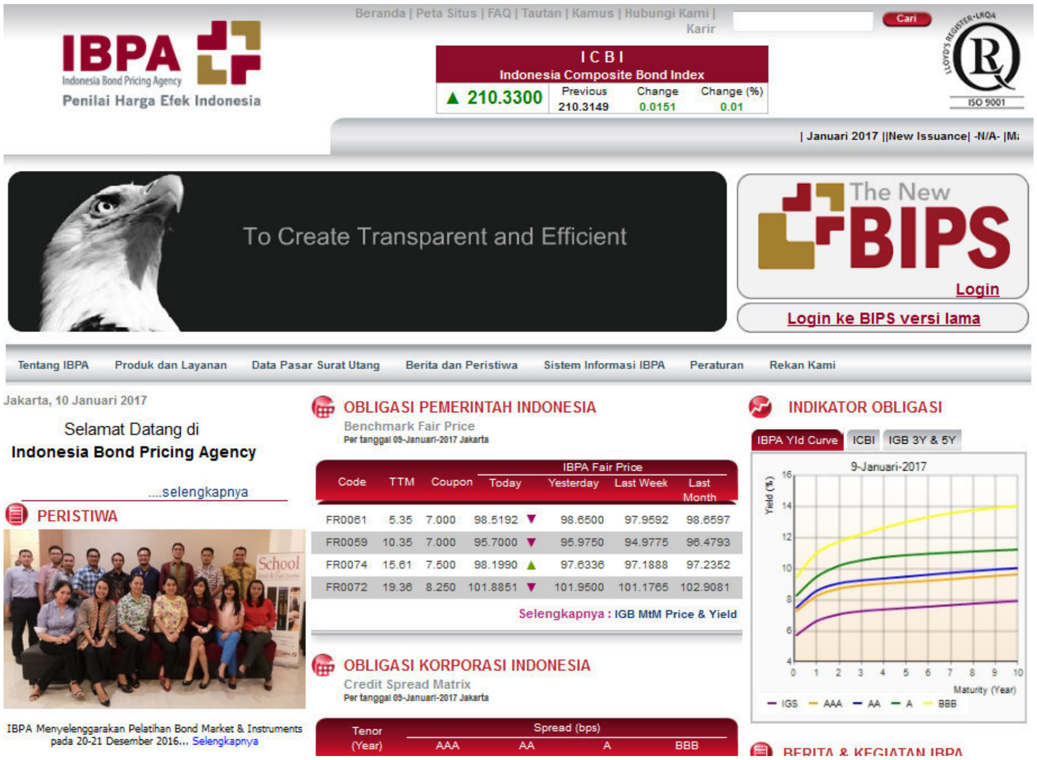
Source: Indonesia Bond Pricing Agency. http://www.ibpa.co.id

IBPA calculates mark-to-market prices daily for government and corporate securities—conventional, *sukuk*, and MTN fair prices—and publishes research reports on debt securities and related topics on a periodic basis. Prices are also available to the general public via the IBPA website (Figure 3.2). IBPA also calculates data such as yield rates, yield curves, groups of indexes, and other data related to its main role.

The IBPA website is still largely maintained in Bahasa Indonesia. While only certain sections of the website are available in English, IBPA maintains a microsite that provides an effective dashboard overview of its pricing information, as well as yields, yield curves, and bond index data.[31] The microsite is also shown in Chapter IV.

[31] See http://www.ibpa.co.id/IBPAMicrosite.aspx

Figure 3.2: Indonesia Bond Pricing Agency Website



Source: Indonesia Bond Pricing Agency. http://www.ibpa.co.id

L. Transfers of Interest in Bonds and Notes

The transfer of interest in, or ownership of, debt securities in the Indonesian market depends on the nature of the debt securities and their underlying depository. Government securities are recorded in BI's Scripless Securities Settlement System (BI-SSSS), the book-entry system for government securities, while corporate debt securities are registered, settled, and safekept in KSEI.

1. Government Securities

BI operates BI-SSSS, or 4S, as the central depository for government securities and the debt instruments issued by BI itself. The transfer of securities resulting from auction bids as well as transactions between BI and the constituents of the interbank market are effected in the accounts of Primary Dealers and interbank market participants in BI-SSSS, respectively. Participants need to maintain separate accounts for proprietary and client holdings.

2. Other Debt Securities

As the central securities depository for Indonesia, KSEI maintains the records of investor assets in an electronic book-entry system known as C-BEST. Securities issued in the Indonesian market need to be registered with KSEI to be eligible to be settled. KSEI is responsible for the transfer of securities between account holder for corporate debt securities and Sharia bonds, whether those are listed and traded on the exchange or in the OTC market. Securities are maintained in KSEI on a scripless basis, although the withdrawal of physical certificates is principally possible (see Chapter VI).

In C-BEST, securities are registered in the names of the account holders, being brokers or custodian banks, or in their sub-accounts for specific beneficial owners. 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.

3. Prohibited Transfers

There are no OJK regulations specifying prohibited transfers. However, KSEI issued regulations for non-exchange transactions in 2015, as Regulation of KSEI Number V-D regarding Free of Payment (FOP) Instruction. Under this regulation, an account holder in KSEI needs to fulfill certain requirements to be able to use FOP instructions, such as stating the purpose of the settlement or giving one of the permitted settlement reasons. KSEI has the authority to examine the participants' documents related to the FOP settlement. Participants who fail to submit those required documents may face enforcement actions, such as being issued with sanctions.

4. Custodian Point of View

Custodians—both banks and brokers—participate in KSEI as account holders and are connected to C-BEST via in-house networks or a direct connection to KSEI's infrastructure. Custodians enter instructions for settlement into C-BEST where the instructions are matched and the transfer of securities is effected upon matching.

The securities are held in the name of the account holders or in the sub-accounts of the account holders for individual clients. If an account holder or their clients hold government securities, the transfer of these securities is carried out in KSEI as the sub-registry of BI-SSSS and appears in the books of the account holder accordingly.

M. Market Participants

1. Issuers

The government is the dominant issuer of bonds and *sukuk* in Indonesia. The MOF has the authority to issue Treasury instruments such as government bonds and *sukuk*, while BI has the authority to issue SBI.

The government is also the principal issuer in the debt market through the issuance of Treasury bonds and Treasury bills by the MOF. Government bonds and *sukuk* are listed on IDX, with relevant information found through IDX's market information on its website. BI also issues SBI and SBIS, which are short-term bank certificates.

Corporates have issued conventional bonds and *sukuk*, or issued under a shelf-registration concept and MTN programs for private placements. A list of corporate bond and *sukuk* issuers can be found in the annual *IDX FactBook* or on the IDX website.[32]

[32] See http://www.idx.co.id/en-us/home/marketinformation/listofsecurities/corporatebonds.aspx

2. Investors

Foreign investors and domestic financial institutions, including banks and non-bank financial institutions such as insurance companies, dominate the Indonesian debt market, with sizable assets also held by pension funds and mutual funds. The main investor types are briefly reviewed below.

a. Banks

Banks and other financial institutions still are the key domestic investor type in debt securities in Indonesia, particularly in government securities. Banks may use government securities as part of their capital requirements, in repo transactions with BI, and as collateral for other types of market transactions.

As of the end of September 2016, domestic banks held approximately 21% of the issued government securities, which included Treasury bills and bonds.[33] This compares with about 34% at the end of September 2011.

Banks may also facilitate the investment in debt securities for their clients and hold the resulting assets in their books.

b. Insurance Companies

Given the prudential nature of their business, insurance companies are another major investor in debt securities, particularly government securities. The insurance sector accounted for approximately 13% of the holdings of outstanding government securities at the end of September 2016.

c. Retail or General Investors

Both retail SUN and *sukuk* are sold to individual Indonesian citizens through a selling agent in the domestic primary market. This retail market has been established since 2006 with the launch of the first retail bonds, then known as ORI001, to the public through book building.

d. Mutual Funds

Mutual funds (KIK), which are also referred to in the Indonesian market as collective investment contracts, may invest in debt securities under the Capital Market Law, pursuant to the respective provisions in their mandates.

Since the so-called mutual fund crisis in 2005, when a run on mutual funds holding large amounts of debt securities led to redemptions and a suppression of the debt market, the holdings of government securities by mutual funds have slowly recovered. KIK now comprise just over 4% of total outstanding government securities, compared to about 13% before the mutual fund crisis in 2005 (albeit on the basis of a significantly lower issuance total).

At the end of 2015, OJK reported 69 KIK focused on debt securities, with a total net asset value of IDR19.8 trillion. OJK also issued effective Registration Statements for the public offerings of 19 new fixed-income funds, and 4 Sharia fixed-income funds in 2015.

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[33] Bank holdings data are available on *AsianBondsOnline* at https://asianbondsonline.adb.org/indonesia/data/bondmarket.php?code=Investor_CI_HHI

e. Pension and Provident Funds

Pension and provident funds, owing to their prudential nature, are typical investors in debt securities, particularly government securities. The share of pension and provident funds in total government securities outstanding was 4.6% at the end of September 2016, just slightly more than the holdings of mutual funds.

f. Indonesia Deposit Insurance Corporation

The Indonesia Deposit Insurance Corporation (LPS), known in Bahasa as Lembaga Penjamin Simpanan, is a significant investor in government securities given its mandate to provide stability to the banking sector in case of bank failures. LPS invests the premiums paid by banks on their deposit balances in quality assets according to its mandate. LPS can submit noncompetitive bids at government securities auctions to buy government securities.

At the end of financial year 2014, LPS assets included holdings in government securities of IDR45.5 trillion, equivalent to about 3.8% of total government issuance outstanding at that time.[34] These holdings represented about 91% of LPS's total assets. Further details on the functions of LPS can be found in section Q in this chapter.

g. Foreign Institutional Investors

Foreign institutional investors are the largest investor group in the Indonesian bond market, particularly in government securities, representing about 39% of all holdings in government securities at the end of September 2016. This compares to only about 13% at the end of September 2006.

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

3. Parties Involved in Debt Securities Issuance

The government and corporate parties involved in conventional and Sharia debt securities 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 Indonesian market.

a. Primary Dealers (SUN Auctions) and Auction Participants (Sukuk Negara Auction)

In Indonesia, Primary Dealers and auction participants are commercial banks or securities companies appointed by the MOF, acting as market participants in the primary and secondary markets for government debt securities. See section E in this chapter for details on government debt securities auctions.

As part of the appointment as Primary Dealers, banks and securities companies obtain exclusive rights to bid at government securities auctions in the primary market and to purchase government debt securities. In contrast, auction participants for Sukuk Negara auctions are not subjected to the obligations applied to Primary Dealers.

[34] In Indonesia, the financial year for the government and major market institutions follows the calendar year.

For the purpose of facilitating transactions in the primary market, Primary Dealers maintain accounts in BI-SSSS and the BI real-time gross settlement system.

At the end of November 2016, there were 19 Primary Dealers appointed by the MOF, of which 4 were securities companies. For Sukuk Negara auctions, the MOF had appointed 21 auction participants, of which four were securities companies.

b. Underwriter(s)

The Capital Market Law does not prescribe the appointment of an underwriter for a public offer. However, the issuer will typically appoint one or more underwriter(s) to support the debt securities issuance (see also Chapter II.F); if more than one is appointed, the issuer will determine a lead underwriter. The (lead) underwriter is expected to support the compilation of the issuance documentation and disclosure information.

Underwriters for debt securities issuance may be securities companies or banks, and will have to be licensed by OJK as Capital Market Institutions or Capital Market Supporting Institutions, respectively (see Chapter II.I for details).

At the end of 2015, 21 active underwriters were able to provide underwriting services for Sharia instruments.

c. Selling Agents

In addition to underwriters, the issuer may appoint selling agents for the distribution of the planned securities issuance. Selling agents may be securities firms or banks, whose responsibility will be to place the securities allocated to them in the market.

Securities firms may carry out the selling agent functions under the Capital Market Participant license, while banks are not able to act as a selling agent for corporate debt securities. Banks may only act as a selling agent for mutual funds.

d. Security Administrator

The function of a security administrator, which is the official term adopted by OJK, includes the roles typically inhabited by a registrar and paying agent. A security administrator is considered a Capital Market Supporting Institution and requires a license from OJK to operate.

In Indonesia, security administrators tend to be independent companies that started as registrars in the Indonesian market before securities were dematerialized.

e. Fiscal Agent (Government Debt Securities and Sukuk Issuance in Foreign Currencies Only)

For the issuance of government debt securities and *sukuk* in international markets, BI will appoint a fiscal agent to carry out the registration of ownership (registry function) and make the interest and SUN and SBSN principal payments in foreign currencies. As such, the role of the fiscal agent is equivalent to a security administrator for domestic debt securities.

f. Trust Agent (Bond Trustee)

In the context of the bond market, licensed trust agents perform the function of bond trustees. Trust agents are appointed by the issuer but represent the interests of the bond, note, or *sukuk* holders, including versus the issuer if so required.

At the end of 2015, OJK had licensed 11 trust agents, all of whom were banks. Of these, 8 trust agents were able to support corporate Sharia issuances.

For details on the bond trust function in the Indonesian market, please refer to section R in this chapter.

g. Sharia Capital Market Expert (Sukuk Only)

A Sharia Capital Market Expert is expected to provide a statement of Sharia compliance for the issuer to demonstrate that the proposed instrument is in compliance with Sharia principles and applicable OJK regulations, pursuant to OJK Regulation Number 16/POJK.04/2015.

h. Custodians

Custodians in the Indonesian market are considered Capital Market Supporting Institutions, are participants of KSEI, and may be banks or securities companies. Commercial banks need to obtain a license from OJK to act as custodian, while securities companies may carry out custodian services as part of their primary license.

At the end of 2016, OJK had licensed 21 custodian banks to provide custody and related services, which comprised a mix of global, regional, and domestic institutions.[35] Eleven custodian banks have been recommended by the DSN-MUI to provide custodian services for Sharia instruments.

i. Law Firms and Accounting or Audit Firms

Law firms and accounting or audit firms who service Capital Market Participants in Indonesia will need to be registered with OJK under the requirements for Capital Market Supporting Professionals. This also includes notaries public who draw up contracts or supporting documentation in the context of securities issuance and servicing.

In addition, law firms and accounting or audit firms are required to be registered with their own respective industry body to be able to carry out their work. Legal advisors engaged in the capital market must also be members of the Association of Capital Market Legal Consultants, which sets training standards and offers training courses in the context of capital market activities and in conjunction with OJK.

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[35] Selected information adapted from Financial Services Authority. *Annual Report 2015*. http://www.ojk.go.id/id/data-dan-statistik/ojk/Documents/Pages/Laporan-Tahunan-OJK-2015,-Memacu-Pertumbuhan-Ekonomi-Melalui-Sektor-Jasa-Keuangan-Yang-Kontributif,-Stabil-dan-Inklusif/OJK%20Annual%20Report%202015.pdf

N. Definition of Professional Investors

Indonesia presently does not feature a professional investor concept in laws or regulations that may be applicable for the bond market.

At present, only legislation related to closed-ended funds touches on the term professional. OJK has been conducting a study into the need for and possible introduction of a professional investor concept into the Indonesian capital market, which was expected to be finalized by the end of 2016. A conclusion on the subject and possible next steps are expected to be announced by OJK in 2017.

At the same time, the investors in the bond market are generally domestic and foreign banks and non-bank financial institutions such as brokers, insurance companies, mutual funds, and pension and provident funds. These are institutions typically included in the professional investor definitions in other markets, and are licensed or otherwise registered with OJK and, hence, are subject to governance and inspection based on securities market and/or prudential regulations. In addition, most of them are also subject to oversight as well as professional conduct and best practice rules by an SRO such as IDX or KSEI.

As such, for all intents and purposes, the Indonesian bond market is mostly populated with investors typically deemed professional.

O. Credit Rating Requirements

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

Debt securities to be offered through public offering should obtain a rating from a CRA licensed by OJK. Rating is an opinion from a CRA concerning the ability of the rated party to meet its obligations in a timely manner (company rating) and/or an opinion related to the securities issued (instrument rating).

In the context of the bond market, ratings are expected to be done for debt securities, *sukuk*, and ABS that are issued via public offer. Under Bapepam Rule Number IX.C.11, it is mandatory for corporate bonds and *sukuk* to complete a re-rating exercise each year and publish the rating. In case of a rating decline, the rating publication should be accompanied by an explanation of the cause of that decline.

In the absence of underlying regulations for the private placement market in Indonesia, no mandatory requirements on the application of credit ratings presently exist. At the same time, a credit rating for a private placement has become established market practice among institutional investors and issuers.

1. Present Requirements

Rating requirements for publicly issued debt securities are governed by Bapepam Rule Number IX.C.11 concerning Rating of Debt Securities (Rule IX.C.11). An issuer who will issue debt securities with a maturity period of 1 year or more through a public offering is required to obtain a rating from a CRA. In order to provide rating services for publicly issued debt securities, a CRA should have a business license from OJK. The rating result from the CRA should at least contain information on the strength or weaknesses of the issuer (company rating) and securities issued (securities rating), and the strengths or weaknesses related to the ability of the issuer to fulfil the payment obligation or the risk assumed by the securities holders.

Under Rule IX.C.11, publicly issued debt securities subject to rating requirements include convertible debt securities or debt securities containing rights to obtain shares.

P. Financial Guarantee Institution

Indonesia does not have a dedicated financial or credit guarantee institution. As a member of ASEAN, Indonesian issuers may be able to utilize the services of the Credit Guarantee and Investment Fund (CGIF), an ABMI initiative supported by ADB.

CGIF is a trust fund of ADB, established by ASEAN+3 (the People's Republic of China, Japan, and the Republic of Korea) and ADB in 2010 to develop and strengthen ASEAN+3 local currency bond markets and is operationally independent from ADB. CGIF offers credit enhancement backed by its high credit ratings (both in global and local rating scales) to local currency bonds issued in ASEAN+3 bond markets through its irrevocable and unconditional guarantee for non-payment of bond principal and coupon. Guarantees are available for up to 100% of the bond principal, and are available to eligible ASEAN+3 companies. CGIF guarantees and supports project financing, securitization, cross-border transactions, first-time issuers, and tenure extensions, and helps issuers reach regional investors (e.g., in the context of a profile listing or targeting investors who are subject to prudential regulations). To date, CGIF has guaranteed bonds in Indonesia, the Philippines, Singapore, Thailand, and Viet Nam.

In March 2016, CGIF announced that it had issued a guarantee for PT Mitra Pinasthika Mustika Finance, a company co-owned by Indonesian and Japanese corporates, to help the issuer tap the bond market for its financing needs for the first time. The 3-year notes denominated in rupiah and issued under an MTN program were largely supported by Japanese investors attracted by the CGIF credit enhancement.

For the full text of the CGIF announcement, as well as other information on CGIF, please refer to the CGIF website.[36]

Q. Market Features for Investor Protection

The Indonesian financial and capital markets provide a comprehensive set of measures for investor protection. Those with relevance to the bond market or typical investment activities are explained in the following sections.

1. Investor Complaints

The Consumer Education and Protection Board, commonly known as EPK, was established in a bid to protect the interests of consumers and the investing public against the violation of laws and regulations, and the committing of crimes in the financial sector, including securities price manipulation and various kinds of embezzlement in financial services activities. The establishment of EPK was mandated in Article 4 of Law No. 21/2011 on OJK.[37]

EPK is responsible for improving public awareness on financial services institutions as well as all products and services that these institutions offer in the financial industry.

[36] See https://support.cgif-abmi.org/wp-content/uploads/2016/04/MPMF_TA_CGIF_Closing-Announcement_EN_20160311_F.pdf
[37] Text adopted from the OJK website at http://www.ojk.go.id/en/kanal/edukasi-dan-perlindungan-konsumen/tentang-epk/Pages/Tugas.aspx

One key objective is to improve the public's level of knowledge and understanding of financial products and services in Indonesia. This is expected to increase participation and trust among consumers and public in the financial industry, including the Indonesian bond market and its participants.

According to Article 28 of Law No. 21/2011 on OJK, the agency has the authority to take preventive measures to protect consumers and the investing public through

- education,
- a consumer complaint service, and
- legal advocacy.

Investors may direct their complaints to EPK if the financial institution or market participant against whom the original complaint was brought is unable to rectify the situation to the satisfaction of the investor.

2. Retail Investors

While institutional investors dominate the bond market in Indonesia, the regulatory authorities and market institutions have a clear focus on investor information and education programs and services, particularly for retail investors.

For example, IDX provides comprehensive information on the asset classes listed and traded on its markets, including bonds. In addition, IDX is planning to operate an online capital market school, Sekolah Pasar Modal, where investors can learn about the capital market through learning modules. For the time being, the school operates through physical classes on IDX premises.

In addition to EPK, OJK also provides comprehensive information on relevant laws and regulations on its website, in relation to both the conventional and Islamic capital market and its products.

The MOF carries detailed descriptions of government securities and their features on the Bahasa Indonesia version of the website of the Directorate General for Budget Financing and Risk Management.

In turn, BI provides comprehensive information on government securities on its website and features a consumer information and education section, which is provided in Bahasa Indonesia only. The section contains investment calculators and simulation tools, product information, and a glossary of financial terms.

The website of IBPA provides comprehensive information on bonds, notes, and *sukuk* issued in Indonesia, including pricing, yields, and indexes, as well as a glossary of terms. IBPA also makes available research reports via its website.

3. Whistle-Blowing System

OJK operates a whistle-blowing system, allowing for anonymous tips on potential violations of laws and regulations, or violations of the OJK Code of Ethics by employees, to be submitted to OJK. Tips may be sent via the OJK website or email, or to a dedicated mail address.

4. Indonesia Securities Investor Protection Fund

The Indonesia Securities Investor Protection Fund is an institution that manages investor protection funds in the Indonesian capital market. This institution was established in 2012 by IDX, KPEI, and KSEI, with its permit authorized through Ministry of Justice and Human Rights Decree No. AHU-64709.AH.01.01 of 2012 concerning Company Law (18 December 2012). KPEI holds a 33.3% share in the Indonesia Securities Investor Protection Fund.

5. Indonesia Deposit Insurance Corporation

LPS is an independent institution accountable to the President of Indonesia. Originally established pursuant to Law No. 24 of 2004 regarding Indonesia Deposit Insurance Corporation, LPS is now carrying out its functions in the market under Law No. 7 of 2009, which superseded the original legislation and amendments since.

LPS is one of the pillars in the financial safety net besides BI, OJK, and the MOF.

All banks that operate within the territory of Indonesia are obligated to become a member of the deposit insurance system managed by LPS. To run the deposit insurance program, LPS collects premiums from member banks. Each bank is obliged to pay an insurance premium of 0.1% of the average monthly balance of total deposits.

The number of member banks in LPS's insurance program as of 31 December 2014 was 1,919, comprising 119 commercial banks and 1,800 rural banks. Deposits insured by LPS consist of fully insured deposits up to IDR2 billion and partly insured deposits of more than IDR2 billion (the insured part is a maximum of IDR2 billion).[38] Under Article 84 of Law No. 24 of 2004 regarding Indonesia Deposit Insurance Corporation, LPS's mandate is to accumulate and maintain reserves at a targeted 2.5% of total deposits in the banking system.

LPS performs a dual function in the Indonesian market.[39] In addition to its key purpose to safeguard deposits in the banking sector for banking customers, it also serves as the market's recovery institution, or liquidator, for failed financial institutions.

6. Foreign Investors

Foreign investors have the same rights as domestic investors. Most institutions and market infrastructure providers in the bond market—or securities market at large—provide information in English in official material and on their websites.

7. Trust Agent or Bond Trustee

Market practice in the Indonesian bond market includes the use of a trust agent in the role of a bond trustee or a trustee for the corresponding Sharia bond. The trustee, although appointed by the issuer, will represent the interests of the bond, note, or *sukuk* holders, including against the issuer if so required.

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

8. Capital Market Law

The Capital Market Law, promulgated as Law No. 8 of 1995 on the Capital Market, set the foundation of the Indonesian capital market as it is today, including for the bond market. The law prescribed a capital market supervisory agency, regulated licensing of market institutions and participants, introduced mutual funds, and also consolidated the provisions for a fair and orderly capital market safe for general or retail investors.[40]

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[38] Adopted from Indonesia Deposit Insurance Corporation. 2014. *Annual Report 2014*. http://www.lps.go.id/en/web/guest/laporan-tahunan
[39] See www.lps.go.id
[40] The text of the Capital Market Law may be downloaded from the OJK website at http://www.ojk.go.id/en/kanal/pasar-modal/regulasi/undang-undang/Default.aspx

Noteworthy provisions in this context are detailed below.

- Chapter IX (Issuers and Public Companies) stipulates the use of a Registration Statement for OJK approval to ensure that all documentation and issuance information are available to investors. Article 71 requires the acknowledgment of potential investors that they have received all prescribed materials. In turn, Article 78 prohibits false or misleading statements with regard to material information in the issuance documentation. Articles 80 and 81 establish the liability of parties who have provided such false or misleading information under obligations in the law or supplementary regulations, including for consequential losses to investors.

- Chapter X (Reporting and Disclosure Information) establishes an initial and continuous disclosure regime for issuers of securities in the Indonesian capital market, and prescribes periodical reporting requirements by market institutions and participants.

- Chapter XI (Fraud, Market Manipulation, and Insider Trading) prohibits fraudulent activities, such as creating a false market or insider trading, and establishes the basis for censure or prosecution of parties violating these provisions.

- Chapter XII (Formal Investigations) contains the provisions for the investigation of alleged violations of the law, including compelling such parties to provide information or to cease or desist certain activities.

- Chapter XIII (Criminal Investigations) authorizes criminal investigations of alleged fraudulent activities by investigators of the capital market supervisory body (OJK) and gives them the authority to carry out such investigations with powers under the Indonesian Criminal Code. The criminal provisions if convicted under such investigations are referenced in Chapter XV.

- Chapter XIV (Administrative Sanctions) stipulates the right of the capital market supervisory body (OJK) to impose sanctions on parties for violations of the law or implementing regulations, ranging from written admonitions and fines to the revocation of the business license and cancellation of company registration.

- Chapter XVI (Other Provisions) establishes the ability for investors to sue for compensation for losses from parties alleged or convicted of violations of the law and its supplementary regulations.

R. Bond or Sharia Bond Trustee

Indonesian legislation does not contain a trust law or specific trustee concept as such. However, the concept of a trust agent as a Capital Market Supporting Institution is provided for in Articles 50–54 of the Capital Market Law. In addition, the existence of trusts and the role and functions of trustees are based on regulations originally established by BI and Bapepam, respectively. In the context of the bond market, only the trustee regulations are considered here.

1. Trust Agents

The official name for trustees in the Capital Market Law and supplementary regulations, and in OJK nomenclature, is trust agents. Trust agents need to obtain a license from OJK to perform the trustee functions. Trust agents are required to be banks, pursuant to the Capital Market Law and the original Bapepam Rule Number VI.C.2: Registration of a Commercial Bank as a Trust Agent (KEP-36/PM/1996), which was established as a decision of the then Bapepam Chairman in January 1996 and remains in force until superseded. In any case, trust agents must apply for a license (at present) to OJK, are required to fulfill certain eligibility criteria, and will have to separate their trust operation from the rest of the bank.

Trust agents aiming to perform the trustee function for Sharia bonds and other such instruments following Islamic principles will need to obtain further consent from the DSN-MUI. A *sukuk* trust agent will need to confirm that is has an officer in charge and/or an expert in trust agent activities who comprehends any activity that may contradict the Sharia principles as applied in the capital market. Such information is also to be included in the prospectus for public offers of Sharia bonds.

To ensure that a trust agent can perform its function independently, trust agents are prohibited from having an affiliation with the issuer, unless the affiliation is made due to the government's ownership or equity participation. Trust agents are not allowed to enter into a credit relationship with the issuer (where the trust agent is a creditor to the issuer) or be the trust agent for debt securities for which it is a guarantor or collateral provider.[41] This is to avoid a conflict of interest between a trustee, being the debt securities or *sukuk* holder's representative, and the issuer with whom a trustee is affiliated.

2. Trust Agents as Bond Trustee or Sharia Bond Trustee

In the context of the bond market, trust agents performing a bond trustee role are appointed by the issuer but represent the interests of bond, note, or *sukuk* holders, including versus the issuer through legal proceedings or in court, if so required. A bond trustee may not represent the interests of both the holders and guarantors of the same debt securities. Trustees do not require special power of attorney to fulfill their role in consideration of the interest of the holders.

Debt securities as well as Sharia bonds issued via a public offering in Indonesia require the appointment of a trustee.

The trustee is required to observe Bapepam Rule Number X.I.2: Documents to Be Maintained by Trust Agents, also issued in January 1996. The regulation prescribes the need to maintain records on the trustee activities; the trust agreement(s); notes and minutes from meetings with the issuer and with bond, note, or *sukuk* holders; and other documents.

The trustee is also subjected to the obligations contained in Bapepam Rule X.I.1 on Trust Agent Reports issued in January 1996 as a decision of the then Bapepam Chairman (Kep-77/PM/1996). The reporting obligations include annual and semiannual activities reports, including information on the debt securities under a trustee's care, and any violations of the provisions in the issuance documentation, among others.

The trustee is obliged to pay compensation to debt securities or *sukuk* holders to cover the loss due to negligence in performing its duty as regulated in law and/or its operational regulation and also in the trusteeship contract.

[41] As stipulated in Bapepam-LK Rule Number VI.C.3: The Credit and Guaranteeing Relationship between Issuers and Trust Agent, pursuant to a Decision of the Chairman of Bapepam-LK (KEP309/BL/2008), which is available at http://www.ojk.go.id/Files/regulation/capital-market/bap-rules/cmsi/3/VIC3.pdf

3. Trust Agreement (Trust Agent Contract)

OJK regulations require that the trust agent acting as a bond trustee executes a trust agreement—domestically known as a trust agent contract—with the issuer according to the provisions stipulated in the regulations.

The trust agent contract contains the provisions for the arrangement of meetings of debt securities holders. The obligations for the trust agent contract are stated in Bapepam-LK Rule Number VI.C.4: General Provision and Trustee Contract of Debt Securities, which remains in force, and include

(i) purpose of the meetings;
(ii) parties who may request the meetings;
(iii) procedures to submit request of the meetings;
(iv) objection to hold meetings, which states that this must be notified in writing including the reasons for refusal to the applicant, with a copy furnished to Bapepam-LK;
(v) announcement, calling, and organization of the meetings;
(vi) procedure for the general meeting of holders of debt securities;
(vii) quorum and decision-making;
(viii) fees and costs incurred to be borne by the issuer;
(ix) an official report of the meetings that should be notarized; and
(x) issuer, trustee, and the holders of debt securities shall comply with the decisions taken in the meetings.

S. Bankruptcy and Insolvency Provisions

Law No. 37 of 2004 on bankruptcy and suspension of payment states that a decision to declare bankruptcy must meet the following conditions:

(i) a debtor has two or more creditors and is unable to fulfill its obligations on at least one debt on maturity date and its payables; or
(ii) a debtor has been declared bankrupt by court decisions, either upon its own application or upon the request of one or more creditors.

In case the debtors are banks, securities companies, the stock exchange or clearing and guarantee institution, or the central securities depository, a bankruptcy petition could only be requested by OJK. In contrast, if debtors are insurance companies, reinsurance companies, pension funds, or state-owned enterprises involved in the public interest, only the Minister of Finance can request a bankruptcy petition.

According to Article 85 of the Capital Market Law, the party requesting a bankruptcy petition to the court toward an issuer has to report it to OJK and the stock exchange where the issuer’s securities are listed as soon as possible and no later than 2 working days from the date the request for bankruptcy is submitted. According to the original Bapepam-LK Rule Number X.K.5: Disclosure of Information regarding Issuers or Public Company with Respect to Bankruptcy, which remains in force, an issuer who fails or is not able to avoid failure to fulfill its obligations toward a nonaffiliated creditor has to submit a report concerning its condition to both OJK and the stock exchange where its securities are listed as soon as possible, no later than the second working day since the issuer has failed or not been able to avoid failure to fulfill its obligations.

The report has to include details about the outstanding debt, including the amount of principal and interest, loan terms, name of creditors, purpose of the debt incurred, and any reasons for the failure or inability to avoid failure. In the event the issuer or public company is submitted to the court for a declaration of bankruptcy, the issuer or public company must submit a report regarding the matter to OJK and the stock exchange(s) where its securities are listed as soon as possible, but not later than 2 working days from the time the issuer or public company learns of the petition for a declaration of bankruptcy. The stock exchange shall publish the information that the issuer or public company is subject to the request for a declaration of bankruptcy from the court within the same day the information is received by the stock exchange. Any expense arising from such declaration of bankruptcy, including the appointment of receivers, becomes the responsibility of the issuer.

T. Event of Default and Cross-Default

1. Terms of Event of Default

The event of default is a condition under which issuers may be defaulting. Pursuant to original Bapepam-LK Rules that remain in force until amended, OJK requires that such conditions as well as the procedure to declare default be clearly stated in the trustee contract. According to the same regulations, the trustee contract shall contain a list of events of default that include, among others

(i) the issuer does not pay the principal and interest of the debt securities and *sukuk* on its maturity;
(ii) the actual condition about the collateral or the issuer status and its management is different from the information and explanation provided by the issuer;
(iii) the issuer has been declared in default in relation to a credit agreement by one or more of its creditors (a cross-default wherein clauses are used in contracts and grace periods may apply);
(iv) suspension of payment (moratorium) of the issuer is declared; and
(v) the issuer does not perform other obligations stated in the trustee contract.

2. Declaration of Default

The original Bapepam-LK Rule Number. VI.C.4 also requires the trustee contract to contain a clear procedure on solving the event of default or on stating a default. Usually, when an event of default occurs, the trustee would require an issuer to take corrective action to solve the problem during a specific time period. If the issuer does not take the necessary corrective action, 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 explanation and clarification of the issuer, the meeting may decide to

(i) restructure the debt,
(ii) declare default status to the issuer, or
(iii) set another bondholders’ meeting to decide whether the default will be noticed or not.

3. Cross-Default

Provision for the declaration of a cross-default may be included in the issuance documentation and the trustee contract. If so included, the cross-default clause will define the applicable conditions and actions to be taken by participants to eventuate the cross-default.