

Indonesian Bond Market Challenges and Opportunities

This chapter discusses some of the real and perceived challenges facing the bond market in Indonesia and its participants. This chapter also aims to describe the possible mitigating factors or market developments that could address these challenges in an appropriate manner.

A. Challenges in the Indonesian Bond Market

1. Listing Only for Publicly Offered Debt Securities

The Capital Market Law stipulates that a listing of securities is only possible for those issuances, which have been or are being offered to the public. This precipitates that listed debt securities are typically aimed at the general investor universe. Thus, the ability to take advantage of a domestic profile listing mechanism is not available for issuers of debt securities in Indonesia who aim their issuances at a professional investor universe.

Instead, such issuance, typically via private placements (see section 3 in this chapter), tend to be listed on other regional listing places such as the Singapore Exchange. Since the prescriptions regarding the listing of securities are anchored in the law, any change to applicable provision would have to undergo the full legislative process, which may take several years.

2. Absence of a Professional Investor Concept

Indonesia presently does not have a professional investor concept embedded in law or regulations. This prevents the market from setting up a defined professional bond market segment or participating in regional initiatives that have such professional market segment as a prerequisite.

At the same time, the current private placement market is populated by investors who are for all intents and purpose described as professional and regarded as such under the professional investor concepts in other markets (e.g., banks, securities firms, insurance companies, and asset managers). Yet, since the private placement market in Indonesia is not yet included in the regulatory framework of OJK, an effective ring fencing of the private placement market as a professional market, and the protection of general investors, may not be guaranteed in all instances.

To address this matter, OJK is conducting a study on the use and possible implementation of a professional investor concept for the securities market overall, with the conclusions from the study expected to be published in the course of 2017 and leading to draft regulation. The actual implementation of any such concept and regulation is envisaged to take another 2 years.

3. Regulatory Framework for Private Placements

At the time of the compilation of the Indonesia Bond Market Guide, the issuance of debt securities in the form of a private placement did not fall under the regulatory coverage of OJK due to an absence of specific provisions in the Capital Market Law and supplementary regulations. While this lack of formality of such an issuance form popular with professional investors may not appear to be a significant issue, and since the Indonesian market does witness private placement activities, it may deter the participation of institutions—as either issuers or investors—that are held to certain investment principles by their mandates or prudential regulations and, hence, would not be able to participate in an unregulated market segment.

In response to market feedback in recent years, OJK was in the process of conducting a study on a potential regulatory framework for private placements at the time of the compilation of the Indonesia Bond Market Guide. Conclusions from the study and potential next steps are expected to be published to the market in the course of 2017.

4. Language of Issuance Documentation

Under prescriptions in the so-called Language Law (see also Chapter III.H), contracts, agreements, and other official documents are required to be in Bahasa Indonesia in addition to those that are also in a foreign language such as English. These prescriptions have also been applied to the submission of securities issuance related documentation in the context of a Registration Statement to OJK.

In consequence, an issuer with existing, standard debt securities issuance documentation in English—for example, for the purpose of a note issuance program in other regional markets—would not be able to rely on the existing set of documents but also need to have any document to be submitted translated into Bahasa Indonesia. This practice results in additional time to market and extra cost to the issuer. The impact of this practice is also more significant since Indonesia presently does not offer an official private placement market for professional investors where the acceptance of issuance documentation in English is prescribed. At the same time, since issuances in the private placement market in Indonesia are presently done via business-to-business agreements, English documentation and supporting documents may be acceptable if the issuer and investors so agree.

5. Lack of Standardization of Tax Documentation

One of the principal feedback items among foreign investors in Indonesia is the lack of standardization of the documentation to be submitted in the context of taxation of income or capital gains arising from debt securities. Foreign investors are typically required to submit a certificate of residence or similar document to substantiate the ability to claim tax relief under a DTA between the investment market and their country of residence (see also Chapter VI.G). While such a certificate is often valid only for a number of years, it may still be applied for taxation relief since the residence status of the investor is not likely to change. In most markets, the certificate of residence is accepted as presented, though it need to be translated into English (or the local language) if the original is in a foreign language.

In Indonesia, market practice allows each issuer of debt securities to individually set the documentation requirements, and forms and formats for additional information the issuer may require. This because the issuer is responsible towards the Directorate General of Taxation of the MOF for the correct application and payment of withholding tax at the time of interest payment. There is no standard (set of) tax documentation. This means that both investor and custodian or broker have to issue, accept, and

maintain a multitude of forms and formats, despite the fact that they all are serving the same purpose.

In response to the continuous feedback from nonresident investors, ABMF has commenced efforts to document, understand, and compare taxation payment and tax documentation practices in the ASEAN+3 markets to arrive at potential recommendations for policy bodies to improve or adjust market practices for the benefits of all stakeholders.

B. Opportunities in the Indonesian Bond Market

1. Private Placement Market Already Existing

The fact that private placements in Indonesia are presently not regulated by OJK is described in section A.3. At the same time, both nonresident issuers and investors continue to have the perception that, as a result, there would be no active private placement market, or no such market at all.

In fact, the private placement market segment in Indonesia is very active, with participants fulfilling the expectations of professional investor types, despite the absence of a formal professional investor concept in the market. Private placements are issued by a variety of corporate issuers, often large Listed Companies with an investment grade rating or better. Investors include banks, securities firms, asset managers, and insurance companies. The market uses a standard information memorandum—locally known as infomemo—which is, however, in Bahasa Indonesia. At the same time, issuance documentation may be in English if issuers, intermediaries, and targeted investors so agree. Other market practices in the private placement segment are in line with international standards.

As such, the private placement segment of the Indonesian bond market could present opportunities for both nonresident issuers and investors to issue debt securities, including note issuance programs such as MTN with a defined expectation toward issuance documentation and fast time to market in the absence of regulatory approval requirements.

2. ASEAN+3 Multi-Currency Bond Issuance Framework

The discussion around an implementation of the ASEAN+3 Multi-Currency Bond Issuance Framework (AMBIF) could serve as a conduit for the recognition or formal definition of a professional investor concept and a professional bond market segment (see also Chapter X). As a national member for Indonesia in ABMF, OJK has been studying the possibility of adopting some of the key elements of AMBIF in its market, including the possibility of introducing a professional investor concept at a later stage (see also Chapter III.N).

For more detailed information on AMBIF, please also refer to section B in Chapter X.