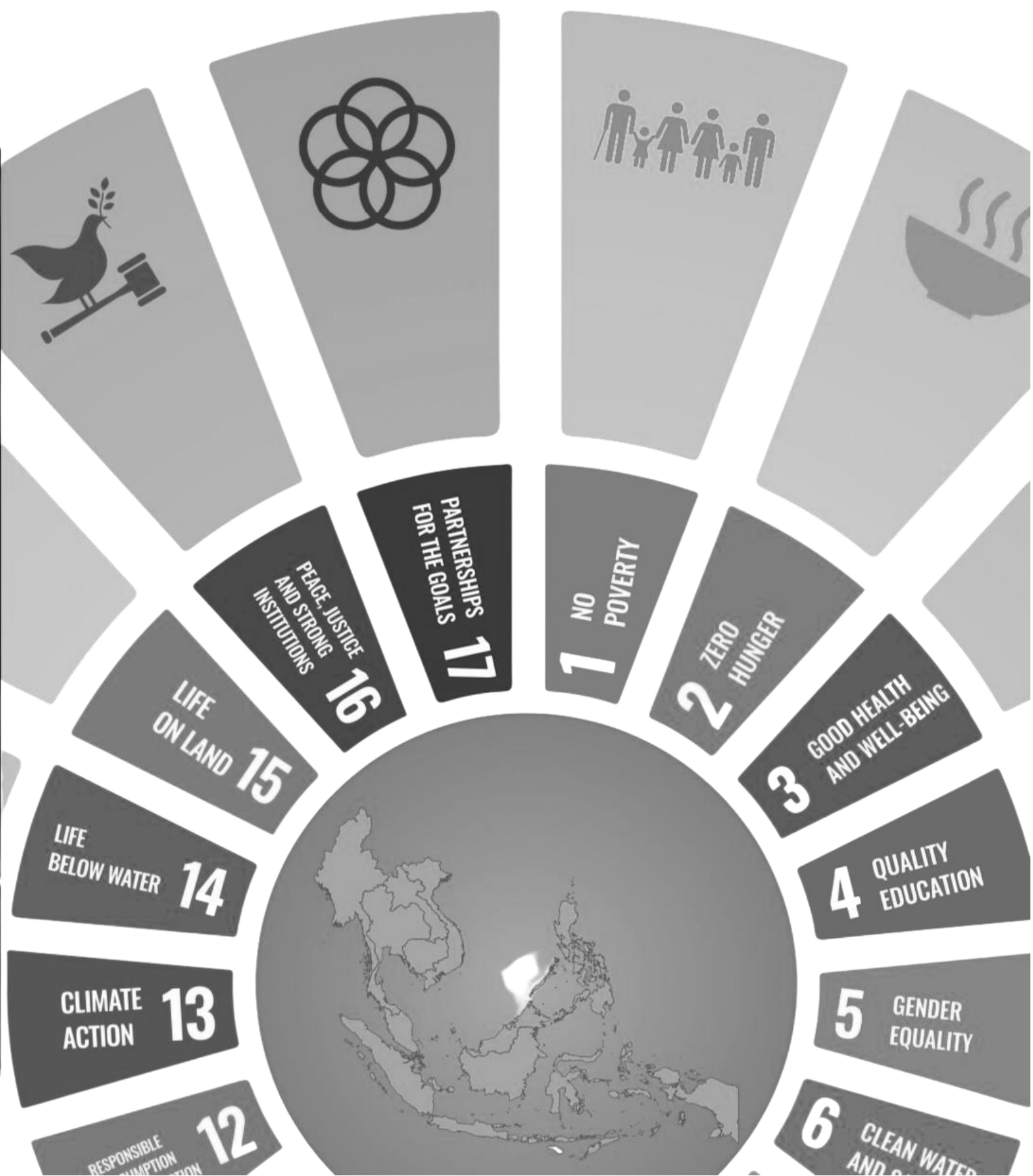


# ASEAN SDG Bond Toolkit

## Supplement: Legal and Regulatory Aspects for Brunei Darussalam



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## Introduction

Brunei Darussalam has the legal infrastructure and framework for bond issuance and is receptive to offerings by foreign issuers. Currently, the local bond market is dominated by sovereign issues in the form of sovereign *sukuks* and notes since 2006, having the core aims to promote Islamic finance and to provide safe and liquid investment instruments to support the local interbank ecosystem. As a member of ASEAN, Brunei Darussalam supports the initiatives of the ASEAN Capital Markets Forum (“**ACMF**”) and adopts and encourages issuers of ASEAN green, social and sustainability bonds (“**GSS Bonds**”) to comply with the standards and requirements of such bonds set by ACMF. The Brunei stock exchange is currently in progress of being set up.

## Executive Summary

| Brunei Darussalam issuers   | Brunei Darussalam investors   |
|---|---|
| Both private entity and public sector Brunei Darussalam issuers are allowed to issue GSS and SDG Bonds. There are no specific requirements for the issuance of GSS and SDG Bonds. | Brunei Darussalam investors are allowed to invest in GSS and SDG bonds in the same way as non-GSS/SDG bonds. There are no additional requirements that offers of GSS/SDG Bonds to Brunei Darussalam investors must comply with. |
| Incentives are not yet available to private entity and public sector issuers.   | Prospectus exemption for bond issuances apply only if it is an exempt security or an exempt transaction   |

## A. Information for Issuers in Brunei Darussalam

### 1. Are there any regulations around issuances of GSS and SDG Bonds?

No. Guidelines issued by Brunei Darussalam Central Bank ("BDCB") will apply. ASEAN GSS Bonds are required to comply with ACMF standards.<sup>1</sup>

### 2. Can bonds be issued by private and public sector entities in Brunei Darussalam?

|  | Private Placement <sup>2</sup><br><i>Offers not made to the general public</i>                                | Public Placement <sup>3</sup><br><i>Offers made to the public</i>  |
|--|---|--|
| <b>Private Entity Issuers<sup>4</sup></b><br><i>Private companies and other entities</i> | Yes, the prospectus exemption applies only if it is an exempt security or an exempt transaction. <sup>5</sup> | Yes, subject to compliance with prospectus registration requirements and applicable guidelines under Securities Markets Order, 2013 of Brunei Darussalam ("SMO"). <sup>6</sup> |
| <b>Public Sector Issuers<sup>7</sup></b><br><i>Government bodies and agencies</i>        | Yes, the prospectus exemption applies only if it is an exempt security or an exempt transaction. <sup>8</sup> | Yes, subject to compliance with prospectus registration requirements and applicable guidelines under SMO. <sup>9</sup>   |

### 3. What key requirements must issuers in Brunei Darussalam fulfil to issue GSS and SDG Bonds?

|   | Private Placement<br><i>Offers not made to the general public</i>  | Public Placement<br><i>Offers made to the public</i>  |
|---|--|---|
| <b>Corporate Form</b>                         | No restrictions. Issuers may either be an incorporated body under the Brunei Companies Act, Cap. 39 or a Statutory Board. <sup>10</sup><br><br>No public advertisement is permitted. | No restrictions. Issuers may either be an incorporated body under the Brunei Companies Act, Cap. 39 or a Statutory Board.<br><br>Currently, there are no public listing guidelines.   |
| <b>Currency</b>                               | There are no restrictions on the issuance of bonds in local currency or foreign currencies.  | There are no restrictions on the issuance of bonds in local currency or foreign currencies.   |
| <b>GSS specific requirements</b>              | None.  | None.   |
| <b>Issuances to investors in jurisdiction</b> | Prospectus exemptions may be invoked. Please see Part B on "Information for Investors in Brunei Darussalam" below.   | Prospectus requirements apply. The issuer is required to apply for approval by completing a registration form, submit the prospectus and pay the requisite B\$500 fee. Additional requirements registration and prospectus requirements set out in the Securities Markets |

<sup>1</sup> Guidelines on Issuance of Debentures (Guideline No. CMA/G-1/2022/10) issued by BDCB under the Brunei Darussalam Central Bank Order, 2010 ("BDCDO").

<sup>2</sup> "Private issuances" are issuances which are offered to less than 50 investors in Brunei Darussalam who are not accredited investors as defined in the SMO to the public in Brunei Darussalam.

<sup>3</sup> "Public issuances" are issuances which are offered to at least more than 50 investors in Brunei Darussalam who are not accredited investors as defined in the SMO.

<sup>4</sup> "Private entity issuer" means a private company limited by shares in Brunei Darussalam which is a separate legal entity from its shareholders.

<sup>5</sup> Section 117 of the SMO. Note: Prospectus and statement registration requirements will not be required if the securities are issued and guaranteed by the Government of Brunei Darussalam.

<sup>6</sup> Section 116 of the SMO.

<sup>7</sup> "Public sector issuer" means the Government of Brunei Darussalam or a Statutory Board in Brunei Darussalam.

<sup>8</sup> See footnote 5.

<sup>9</sup> See footnote 6.

<sup>10</sup> "Statutory Board" means a body established by or under any written law to perform or discharge a public function in Brunei Darussalam.

|  |  |   |
|--|--|---|
|  |  | Regulations, 2015 of Brunei Darussalam ("SMR") also apply. <sup>11</sup>  |
| <b>Reporting requirements</b>                                | Both private entity and public sector issuers are required to notify the BDCB of the offering by way of a prescribed form within 14 days from the offering and submit monthly reports on the private offering within 14 days after end of each month until the maturity of the bond. <sup>12</sup> | Issuers are expected to report to the BDCB within 14 days following any change to the terms of the bonds e.g. product name, issuer, issuer date, changes to credit rating, tenor, maturity, country risk, currency, etc. There is also general requirement on issuer and trustee to make timely disclosure of material information to investors to enable them to make an informed assessment of the issuer and issuance. <sup>13</sup> |
| <b>Credit rating requirement</b>                             | None.  | Credit rating is required for public issuance.  |
| <b>Syariah requirement</b>                                   | Islamic bonds and other similar Islamic based financial products must be approved by the SFSB <sup>14</sup> in accordance with Hukum Syara' (Islamic law) as defined in the Syariah Financial Supervisory Board Order, 2006 (SFSBO).   |   |
| <b>Specific requirements for public (government) issuers</b> | Bonds including sukuku and notes issued and guaranteed by His Majesty's Government of Brunei Darussalam are classified as exempt securities and therefore exempted from prospectus requirements.   |   |
| <b>Specific requirements for foreign issuers</b>             | There is no difference in treatment for foreign issuers.   |   |

**4. Are there any incentives for issuers of GSS Bonds or SDG Bonds?**

No.

**5. Other comments**

Market practice

BDDB is likely to adopt and follow international standards to determine the applicability and suitability of the bond offerings. Based on the guidelines for issuance of debentures<sup>15</sup>, for bonds which are designated and labelled as ASEAN GSS Bonds, issuers should refer to the following:

- (a) ASEAN Capital Markets Forum ASEAN Green Bond Standards 2018
- (b) ASEAN Capital Markets Forum ASEAN Social Bond Standards 2018
- (c) ASEAN Capital Markets Forum ASEAN Sustainability Bond Standards 2018

<sup>11</sup> Part II of the SMR.

<sup>12</sup> Notification on Private Offerings and Exempt Securities and Transactions (Notice NO. CMU/N-1/2016/5) by BDCB under the SMO.

<sup>13</sup> Paragraph 9 of Guidelines on Issuance of Debentures. See also Part III of SMR of Brunei Darussalam on continuing disclosure obligations.

<sup>14</sup> "SFSB" means the Syariah Financial Supervisory Board set up under the Syariah Financial Supervisory Board Order, 2006.

<sup>15</sup> Guidelines on Issuance of Debentures (Guideline No. CMA/G-1/2022/10) issued by BDCB under the BDCDO.

## B. Information for Investors in Brunei Darussalam

### 1. Are there any regulations around offers of GSS and SDG Bonds to investors in Brunei Darussalam?

No. Guidelines issued by BDCB will apply. ASEAN GSS Bonds are required to comply with ACMF standards.<sup>16</sup>

### 2. Can investors in Brunei Darussalam subscribe for SDG and GSS Bonds?

|  | Private Placement<br><i>Offers not made to the general public</i>   | Public Placement<br><i>Offers made to the public</i>  |
|--|---|---|
| <b>Private Entity Issuers</b><br><i>Private companies and other entities</i> | Yes. Prospectus exemptions apply only if it is an exempt security or an exempt transaction. <sup>17</sup> | Yes, subject to compliance with prospectus registration requirements and applicable guidelines under SMO. <sup>18</sup> |
| <b>Public Sector Issuers</b><br><i>Government bodies and agencies</i>        | Yes. Prospectus exemptions apply only if it is an exempt security or an exempt transaction. <sup>19</sup> | Yes, subject to compliance with prospectus registration requirements and applicable guidelines under SMO. <sup>20</sup> |

### 3. Are there any incentives for investors investing in GSS Bonds or SDG Bonds?

No, there are no specific incentives for investors investing in GSS Bonds or SDG Bonds.

### 4. When can an offer be made to investors in Brunei Darussalam without a prospectus?

Yes, there are exemptions from prospectus requirements for certain types of bond issuances under the SMO. Some key exemptions are set out below:

- (a) **Offers made on a "private placement" basis:**<sup>21</sup> An offer made to not more than 50 persons within any period of 12 months. The applicable limit is on the number of offerees in Brunei Darussalam (excluding those who qualify under the other exemptions mentioned herein), and not on the number of persons accepting the offer. No public advertisement is permitted. Securities bought must be held for investment for a period of at least 2 years.
- (b) **Offers made to special classes of investors:**<sup>22</sup> Section 20 of the SMO prescribes 3 classes of investors namely:
  - (i) "accredited investors" who may be either an individual or a corporation having net assets or income exceeding the prescribed amounts under the SMO;
  - (ii) "expert investors" i.e., persons in the business of acquisition and disposal or holding of securities; and
  - (iii) "institutional investors" i.e., the Government of Brunei, a statutory board, a collective investment scheme, pension fund or an institution who holds a licence under the local banking, finance, insurance or securities law.
- (c) **Offers which are "exempt securities":**<sup>23</sup> Securities issued and guaranteed by the Government of Brunei Darussalam, by a bank (except its own securities), commercial paper, notes and debentures which are not more than 270 days to maturity from the date of issue and any class of the securities which BDCB determines by regulation as exempt.

<sup>16</sup> Guidelines on Issuance of Debentures (Guideline No. CMA/G-1/2022/10) issued by BDCB under the BDCDO.

<sup>17</sup> See footnote 5.

<sup>18</sup> See footnote 6.

<sup>19</sup> See footnote 5.

<sup>20</sup> See footnote 6.

<sup>21</sup> Section 117(b)(ii) of the SMO.

<sup>22</sup> Section 20 of the SMO.

<sup>23</sup> Section 117(a) of the SMO.

## **C. Notable developments**

The Ministry of Finance and Economy together with the BDCB are understood to be in the progress of setting up Brunei's securities exchange. This includes finalising the relevant rules necessary for the upcoming exchange such as listing rules, trading rules and depository rules. Development of the securities exchange system has been developed and is in the midst of testing. There has been a closed industry consultation on the listing rules in 2021. Going forward, the relevant rules, process and procedures are being strengthen to ensure the capital market ecosystem will be able to function as accordingly.

A briefing on Initial Public Offering (IPO) with potential local companies as well as relevant business associations were also conducted in late 2020 and early 2021. Nonetheless, no definite timeline in relation to the commencement of operation of the stock exchange has been announced.

In complementing the above development, the BDCB is also in the process of reviewing and updating the SMO, the SMR and the Companies Act, Cap. 39.



## About Ashurst

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## About Abrahams, Davidson & Co.

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