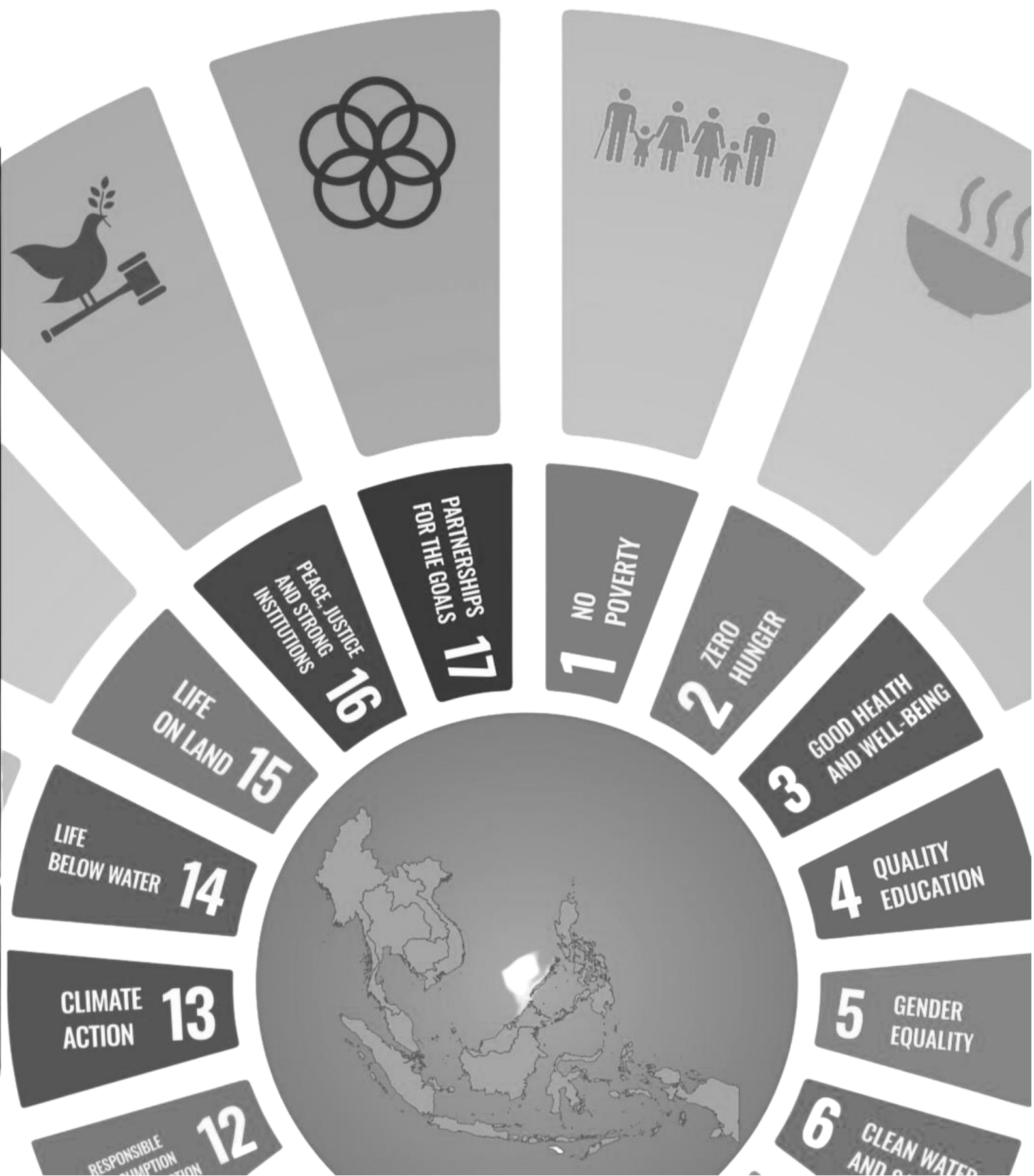


ASEAN SDG Bond Toolkit

Supplement: Legal and Regulatory Aspects for Indonesia



Prepared by OSP in association with Ashurst

Edited by Ashurst LLP

Introduction

In order to support the implementation of sustainable finance, the Government of Indonesia has shown efforts in encouraging public and private sectors to participate in the issuance of green, social and sustainability bonds ("**GSS Bonds**"). In particular, despite the absence of specific regulation on GSS Bonds, the Indonesia Financial Services Authority (*Otoritas Jasa Keuangan* – "**OJK**") has issued two major legal frameworks for the issuance of Green Bonds, namely, OJK Regulation No. 60/POJK.04/2017 on Issuance and Requirements of Environmental Based Debt Securities (Green Bonds) ("**OJK Reg 60/2017**") and OJK Regulation No. 51/POJK.03/2017 on Sustainable Finance for Financial Institutions, Issuers, and Public Companies ("**OJK Reg 51/2017**").

In 2018, PT Sarana Multi Infrastruktur (Persero), an Indonesian state-owned enterprise, kickstarted the Indonesian Green Bonds market by issuing "Green Bond Berkelanjutan I Sarana Multi Infrastruktur Stage I" with an issuance value of Rp500,000,000,000. The Stage I issuance was part of the continual issuance program (shelf registration) of green bonds of up to Rp3,000,000,000,000.

Executive Summary

Indonesian issuers	Indonesian investors
Both private and public sector Indonesian issuers are eligible to issue Green Bonds. However, there are specific requirements to fulfil for the issuance of Green Bonds.	Indonesian investors are allowed to subscribe in Green Bonds in the same way as they subscribe to other debt securities in Indonesia.
OJK and the Indonesian Stock Exchange (<i>Bursa Efek Indonesia</i> – " IDX ") also provide several incentives for Green Bonds issuers.	The offering of Green Bonds has specific requirements reporting that must be complied with. Public offering of debt securities (including Green Bonds) requires a prospectus, while private placements can be made with an information memorandum.

A. Information for Issuers in Indonesia

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

Yes. There are specific regulations regarding the issuance of Green Bonds, namely OJK Reg 60/2017.

In issuing Green Bonds, in addition to complying with the provisions as stipulated in OJK Reg 60/2017, the issuer is also required to comply with other OJK regulations particularly those regarding registration statements and prospectus that apply to the issuance of debt securities/sukuk in general.





OJK Reg 60/2017 defines environmental based debt securities (*efek bersifat utang berwawasan lingkungan*) or Green Bonds as a debt securities with the proceeds going to the financing or refinancing of certain business activities and/or other business activities which aim to preserve, repair and/or enhance quality or function of the environment, either partially or as a whole. The said business activities are also known as environmental based business activities (*kegiatan usaha berwawasan lingkungan* – "KUBL"). The aforementioned KUBL may be in the form of: (a) new KUBL activities; (b) existing KUBL activities; or (c) any KUBL activities that have been completed.

OJK Reg 60/2017 further stipulates that as a general rule of thumb, a KUBL activity should relate to one of the following in order to be financed with Green Bonds:

- (a) renewable energy;
- (b) energy efficiency;
- (c) pollution prevention and control;
- (d) management of natural resources and use of sustainable lands;
- (e) natural resources conservation;
- (f) environmental friendly transportation;
- (g) climate change adaptation;
- (h) product that can reduce the utilisation of resources and producing lesser pollution (*eco-efficient*);
- (i) environmental based building which fulfils the national, regional or international standard or certification; or
- (j) any other environmental based activities.

In addition to the above, a Green Bonds issuer shall obtain an opinion or assessment from an environmental expert¹ which states that the underlying KUBL is beneficial for the environment.

2. Can bonds be issued by private and public sector entities in Indonesia?

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
Private Entity Issuers² <i>Private companies and other entities</i>	 Yes.	 Yes.
Public Sector Issuers³ <i>Government bodies and agencies</i>	 Yes.	 Yes.

¹ "Environmental Expert" is defined under OJK Reg 60/2017 as individual or group of individuals or institution who hold the competency or technicality to carry out assessment, verification or testing against KUBL.

² "Private entity issuer" means individual or business entity in Indonesia.

³ "Public sector issuer" means the Indonesian government or a government agency in Indonesia.

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

	Private Placement <i>Offers not made to the general public</i>	Public Placement ⁴ <i>Offers made to the public</i>
Issuance	<p>Issuers can offer their debt securities (including bonds) through a public offering or without public offering (private placement).</p> <p>Private placement of debt securities is regulated under OJK Regulation No. 30/POJK.04/2019 on Private Placement of Debt Securities and/or Sukuk ("OJK Reg 30/2019"), which stipulates the following requirements:</p> <ul style="list-style-type: none"> (a) (i) public and non-public companies; (ii) Supranational institutions (e.g. <i>World Bank and International Monetary Fund</i>); or (iii) collective investment contract (b) Debt securities with a maturity date of more than one year with a value of at least IDR 1,000,000,000 or less than IDR 1,000,000,000 but issued several times and in one (1) year the value reaches IDR 1,000,000,000; (c) Debt securities with a maturity date of less than one (2) year which issuance is not supervised by other authorities with a value of at least IDR 1,000,000,000 or less than IDR 1,000,000,000 but issued several times and in one year the value reaches IDR 1,000,000,000; (d) Debt securities can only be offered to and subscribed by Professional Investors⁵; (e) The clearing and settlement system for the debt securities must be carried out by PT Kustodian Sentral Efek Indonesia ("KSEI"); (f) The arranging banks or private placement agents for the issuance may only be carried out by licensed securities brokers with OJK; and (g) All transaction documentations for the private placement shall be submitted to OJK no later than 30 calendar days prior to the issuance of the debt securities. 	<p>Issuers can offer their debt securities (including bonds) through public offering or without public offering (private placement).</p> <p>A public offering covers a direct offering of securities by an issuer with the following conditions:</p> <ul style="list-style-type: none"> (a) made within the territory of Indonesia or offered to Indonesian citizens by using mass media⁶; (b) offered to 100 parties⁷; and (c) sold to more than 50 parties. <p>In conducting public offering, issuers must appoint the following advisors:</p> <ul style="list-style-type: none"> (a) underwriter or arranger; (b) public accountants to prepare financial statements; (c) legal consultant to conduct due diligence and issue a legal opinion; (d) public notary; and (e) public appraisers. <p>In addition, Law No. 8 of 1995 on Capital Market ("Capital Market Law") adopts the concept of trustee (<i>wali amanat</i>) for debt securities, in which the trustee acts on behalf of, and represent the interests of the bondholders. The implementation is usually conducted through trustee agreements (<i>perjanjian perwaliamanatan</i>).⁸</p>

⁴ In this wrapper, this refers to public offerings.

⁵ OJK Regulation No. 11/POJK.04/2018 on Debt Securities and/or Sukuk Public Offering to Professional Investors ("**OJK Reg 11/2018**") explains that professional investors consists of (i) financial institutions; and (ii) parties other than financial institutions, that is (i) individual which own net assets amounting to IDR 10,000,000,000, or having an average capital market investment portfolio of at least IDR 3,000,000,000 1 year prior to the public offering of debt securities, or (ii) entities or group with at least 1 year experience in capital market investment which own net assets amounting to IDR 20,000,000,000 (excluding land, building, and intangibles) or having an average capital market investment portfolio of at least IDR 6,000,000,000 1 year prior to the public offering of debt securities.

⁶ Under the Capital Market Law, mass media means newspapers, magazines, films, television, radio and other electronic media, as well as letters, brochures and other printed material distributed to more than 100 parties.

⁷ Party(ies) is defined under the Capital Market Law as an individual, company, joint business, association, or organized group. The parties to whom securities are offered need not all be Indonesian residents or Indonesian citizens residing outside the Republic of Indonesia, for the provisions of the Capital Market Law to apply.

⁸ Article 52 of the Capital Market Law.

	<p>However, pursuant to OJK Capital Market Executive Chairman Letter No. S-161/D.04/2020 on Implementation of OJK Reg 30/2019, the above private placement requirements (as stipulated under OJK Reg 30/2019) does not apply to debt securities that are:</p> <ul style="list-style-type: none"> (a) Issued outside of Indonesian territory; and (b) Not offered to any Indonesian investors (<i>Indonesian citizens or Indonesian entities</i>). 	
IDX requirements for listing debt securities	<p>As per IDX regulations, for securities to be listed and traded on the IDX, issuers must fulfil the following requirements:⁹</p> <ul style="list-style-type: none"> (a) Issuers must be in form of a legal entity; (b) Have obtained an effective registration statement (<i>pernyataan pendaftaran</i>) from OJK; (c) Have obtained rating from registered rating agency (does not apply for debt securities offered to Professional Investors¹⁰); (d) The issuer or its subsidiary must have commercially carried out its core business for at least two (2) years in a row or obtained the top four (4) investment grade from a registered rating agency; and (e) Have an audited financial statement for the latest two (2) fiscal year(s) or audited financial statements since the commencement of issuer's operation (for issuers with less than two (2) years of operation). (f) Listing of Green Bonds on the IDX: For Green Bonds, the additional requirements for the issuers are as follows: <ul style="list-style-type: none"> (i) Issuer's statement letter to use the proceeds for KUBL; and (ii) Opinion or appraisal from an environment expert along with the expert's credentials. 	
Currency	There are no restrictions on the issuance of bonds in local currency or foreign currencies. ¹¹	
Prospectus, information memorandum and registration statement	Bond issuance through private placement must be accompanied by an information memorandum.	Bond issuance through public offering must be accompanied by a prospectus and the issuer must obtain an effective registration statement (<i>Pernyataan Pendaftaran</i>) from OJK.
Green Bonds specific requirements	<p>Prospectus: For Green Bonds, the prospectus must contain the following information:</p> <ul style="list-style-type: none"> (a) types of KUBL and the issuer's environmental objective; (b) methods implemented to identify and manage material environmental risks; and (c) summary of environment expert's opinion or appraisal report.¹² <p>Use of proceeds: For Green Bonds, at least 70% of the proceeds from the public offering of Green Bonds must be utilized to finance KUBL.</p> <p>Reporting: In addition to yearly report to OJK, issuers of Green Bonds are also required to report the environmental expert's review periodically at least once in a year and for every material change to their respective KUBL.¹³</p>	

⁹ Article III.2.2 of Board of Directors of IDX Decree No. Kep-00038/BEI/05-2020 on Amendment to Regulation I-B on Debt Securities Listing ("**Regulation I-B**").

¹⁰ See footnote 5 above.

¹¹ In the event of issuance of debt securities in foreign currency, OJK Regulation No. 7/POJK/2022 on Debt Securities and/or Sukuk Public Offering in Foreign Currency Denomination requires the issuer to state additional information in the prospectus and additional reporting to OJK in relation to the denomination of debt securities in foreign currency.

¹² Article 7 of OJK Reg 60/2017.

¹³ Article 10 of OJK Reg 60/2017.

Specific requirements for public sector issuers	<p>If the public sector issuer is in the form of limited liability company (save for the issuance of SBSN as discussed below), the above requirements for a private entity issuer will generally apply. Where the public sector issuer is a government authority (e.g., Ministry of Finance), please see below.</p> <p>In general, there are two types of debt securities instrument issued by the Government of Indonesia, namely (i) Government Debt Securities (<i>Surat Utang Negara</i> – "SUN")¹⁴ as regulated under Law No. 24 of 2002 on Government Debt Securities ("Law 24/2002") and (ii) Sharia Government Commercial Paper (<i>Surat Berharga Syariah Negara</i> – "SBSN")¹⁵ as regulated under Law No. 19 of 2008 on Sharia Government Commercial Paper ("Law 19/2008").</p> <p>A. <u>SUN</u></p> <p>Types: Pursuant to Law 24/2002, SUN is comprised of (i) State Treasury Securities (<i>Surat Perbendaharaan Negara</i>); and (ii) Government Bonds (<i>Obligasi Negara</i>).</p> <p>Purpose: The proceeds collected from the issuance of SUN will be utilised for (i) funding any shortfall in the State Annual Income and Budget (<i>Anggaran Pendapatan dan Belanja Negara</i> – "APBN"); (ii) covering the cash shortage in the State Treasury; and (iii) administering the State's debt portfolio.</p> <p>Issuer: The issuer of SUN is the Government of Indonesia. Under Law 24/2002, the authorisation as issuer is delegated to the Minister of Finance ("MOF").</p> <p>Prerequisite Approval: There are several key prerequisite actions to be taken and approvals to be obtained by the Government of Indonesia prior to the issuance of SUN as follows:</p> <ul style="list-style-type: none"> (i) MOF shall first consult with Bank Indonesia ("BI") on the proposed issuance of SUN. The purpose of this consultation is to evaluate the monetary implication resulting from the issuance of SUN, and to align the fiscal policy (including the debt management) and monetary policy. (ii) The issuance of SUN shall be approved by the House of Representative (<i>Dewan Perwakilan Rakyat</i> – "DPR"). The approval from DPR to be granted towards the total maximum net amount for issuance of SUN for one fiscal year, the approval of which will be included in DPR's approval on the APBN for the relevant fiscal year. <p>Administrator: BI was appointed as the administrator of SUN under Law 24/2002, with the following scope of administrations: (i) determining strategy and policy for the management of SUN, including risk management; (ii) planning and determining State's debt portfolio structure; (iii) sale administration of SUN through auction or non-auction; (iv) buyback of SUN prior to its maturity date; (v) administering the repayment; and (vi) any other activities in relation to the development of primary market and secondary market of SUN.</p> <p>B. <u>SBSN</u></p> <p>Types: SBSN can be issued in the form of, among others: (i) <i>ijarah</i>¹⁶; (ii) <i>mudharabah</i>¹⁷; (iii) <i>musyarakah</i>¹⁸; or (iv) any other types of SBSN that to the extent do not contravene sharia principles.</p>
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¹⁴ SUN is defined under Law 24/2002 as a commercial paper instrument in the form of debt acknowledgment letter in Rupiah currency or any other currency with the principal and interest repayment of which are guaranteed by the Government of Indonesia, in accordance with its tenor.

¹⁵ SBSN is defined under Law 19/2008 as the State's commercial paper issued by the Government of Indonesia based on sharia principles, as the evidence of the Government of Indonesia's participation in the underlying asset.

¹⁶ *Ijarah* is defined under Law 19/2008 as a transaction where a party (or through its representative) leases its rights over an asset to other assets based on the agreed lease price or period.

¹⁷ *Mudharabah* is defined under Law 19/2008 as a cooperation between two parties or more, where a party is acting as the financier and the other party(-ies) are providing their expertise and skills, and the profit from this transaction will be shared based on agreed *nisbah*. However, any losses resulting from this cooperation will be borne by the financier, except such losses resulting from the provider's negligence.

¹⁸ *Musyarakah* is defined under Law 19/2008 as a cooperation between two parties or more in collecting the funds, either in form of money or in-kind, for the purpose of generating profit, and the profit of which will be shared amongst the parties based on the agreed *nisbah*. However, any losses from this cooperation will be borne by the parties proportionally based on their respective participation.

	<p>Purpose: The proceeds collected from the issuance of SBSN will be utilised for funding the APBN, including the funding of certain projects.</p> <p>Issuer: The issuer of SBSN is the Government of Indonesia, however, under Law 19/2008, the authorisation as issuer is delegated to the MOF. In addition, the Government of Indonesia may establish a special purpose vehicle limited liability company to be the issuer of SBSN.</p> <p>Prerequisite Approval: There are several key prerequisite actions to be taken and approvals to be obtained by the Government of Indonesia prior to the issuance of SBSN as follows:</p> <ul style="list-style-type: none"> (i) MOF shall coordinate with BI on the issuance of SBSN, in order to align the fiscal and monetary policies due to the issuance of SBSN. (ii) Similar to SUN, the issuance of SBSN shall be approved by DPR. The approval from DPR to be granted towards the total maximum net amount for issuance of SBSN for one fiscal year – and the approval of which will be included in DPR's approval on the APBN for the relevant fiscal year. <p>Administrator: BI was appointed as the administrator of SBSN under Law 19/2008, with the following scope of administrations: (i) determining strategy and policy for the management of SBSN, including risk management; (ii) planning and determining State's debt portfolio structure; (iii) sale administration of SBSN through auction or non-auction; (iv) buyback of SBSN prior to its maturity date; (v) administering the repayment; and (vi) any other activities in relation to the development of primary market and secondary market of SBSN.</p>	
Specific requirements for foreign issuers)	Private issuance of debt securities by foreign issuers are limited to supranational entities such as the World Bank, International Monetary Fund, Asian Development Bank and Islamic Development Bank.	Public offering of securities within the territory of Indonesia includes both domestic and foreign issuers, as well as offerings to both domestic and foreign investors.

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

Yes, pursuant to Article 17 of OJK Reg 60/2017, OJK may provide certain incentives to a Green Bonds issuer, which will be further stipulated under OJK Decree. Further, elucidation of Article 17 of OJK Reg 60/2017 provides non-exhaustive examples of such incentives as follows:

- (a) include/grant access to the issuer of Green Bonds to a human resources competency development program;
- (b) grant a sustainable finance awards; and/or
- (c) any other incentives, based on OJK's sole discretion.

However, OJK Reg 60/2017 also stipulates that the aforementioned incentives will no longer be available to the issuer in the event that the underlying business activities being the basis for the issuance of the Green Bonds no longer fulfil the requirements of KUBL.

OJK provides further incentive through its Board of Commissioners Decree No. 24/KDK.01/2018 of 31 December 2018 on Adjustment of the Registration Fee for Public Offering of Green Bonds, in which the registration fee for the public offering of green bonds is 75% lower than the normal registration rate stipulated under Government Regulation No. 11 of 2014 on Levies by the OJK ("GR 11/2014")¹⁹.

In addition, under Regulation I-B, IDX also provides incentive in the form of annual listing fee reduction, in which the annual listing fee for green bonds is 50% lower than the normal annual listing fee stipulated under Regulation I-B.²⁰

¹⁹ The normal registration fee for public offering of debt securities under GR 11/2014 is stipulated at 0.05% from the issuance value and capped at IDR 750,000,000.

²⁰ The normal rate of annual listing fee for debt securities as stipulated under Paragraph V of Regulation I-B ranges from 0.025% to 0.021% in accordance with its respective issuance value.

5. Other comments

At this stage, Indonesia is lacking in KUBL, which in turn affects the numbers of issuance of GSS Bonds and/or SDG Bonds. Further, in the Indonesian market, developing KUBL is considered very expensive especially when it comes to hiring environmental expert/consultant and complying with high-standard environmental requirements.

The Indonesian Government should take initiative to boost the development of KUBL project by, among others, providing a "clear" and "commercial" incentive to project owners of KUBL such as lowering tax rates, granting certain tax exemptions or providing certain subsidies.





It is expected that by having/developing more KUBL, GSS Bonds and/or SDG Bonds will scale up.

B. Information for Investors in Indonesia

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

There are mandatory requirements for the offer of Green Bonds to investors in Indonesia. Please see the key requirements for issuances (Question 3 of Part A).

2. Can investors in Indonesia subscribe for SDG and GSS Bonds?

	Private Placement <i>Offers made to the general public</i>	Public Placement <i>Offers made to the public</i>
Private Entity Issuers <i>Private companies and other entities</i>	 Yes.	 Yes.
Public Sector Issuers <i>Government bodies and agencies</i>	 Yes.	 Yes.

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

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

4. When can an offer be made to investors in Indonesia without a prospectus?

Only bond issuances through private placements can be made without a prospectus but an information memorandum instead. Please see the section "Prospectus, information memorandum and registration statement" (Question 3 of Part A).

C. Notable developments

- The Government of Indonesia has ratified the Paris Agreement through Law No. 16 of 2016, which was supported by OJK's issuance of the Phase I Sustainable Finance Roadmap (2015-2019) and Phase II Sustainable Finance Roadmap, which aims to increase the capacity of financial institutions to shift into green economy.²¹
- Notwithstanding the lack of specific regulations covering social bonds and sustainability bonds (as OJK Reg 60/2017 is specific to Green Bonds issued via a public offering), issuers can still issue GSS Bonds via private placement and align their sustainability bond framework with international standards or principles, as was the case, for example, of the sustainability bonds issued by Bank Rakyat Indonesia and Bank Mandiri.²²

²¹ <https://www.ojk.go.id/keuanganberkelanjutan/id/publication/detailslibrary/2352/taksonomi-hijau-indonesia-edisi-1-0-2022>

²² <https://www.adb.org/sites/default/files/publication/758381/asean3-bond-market-guide-update-indonesia.pdf>



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