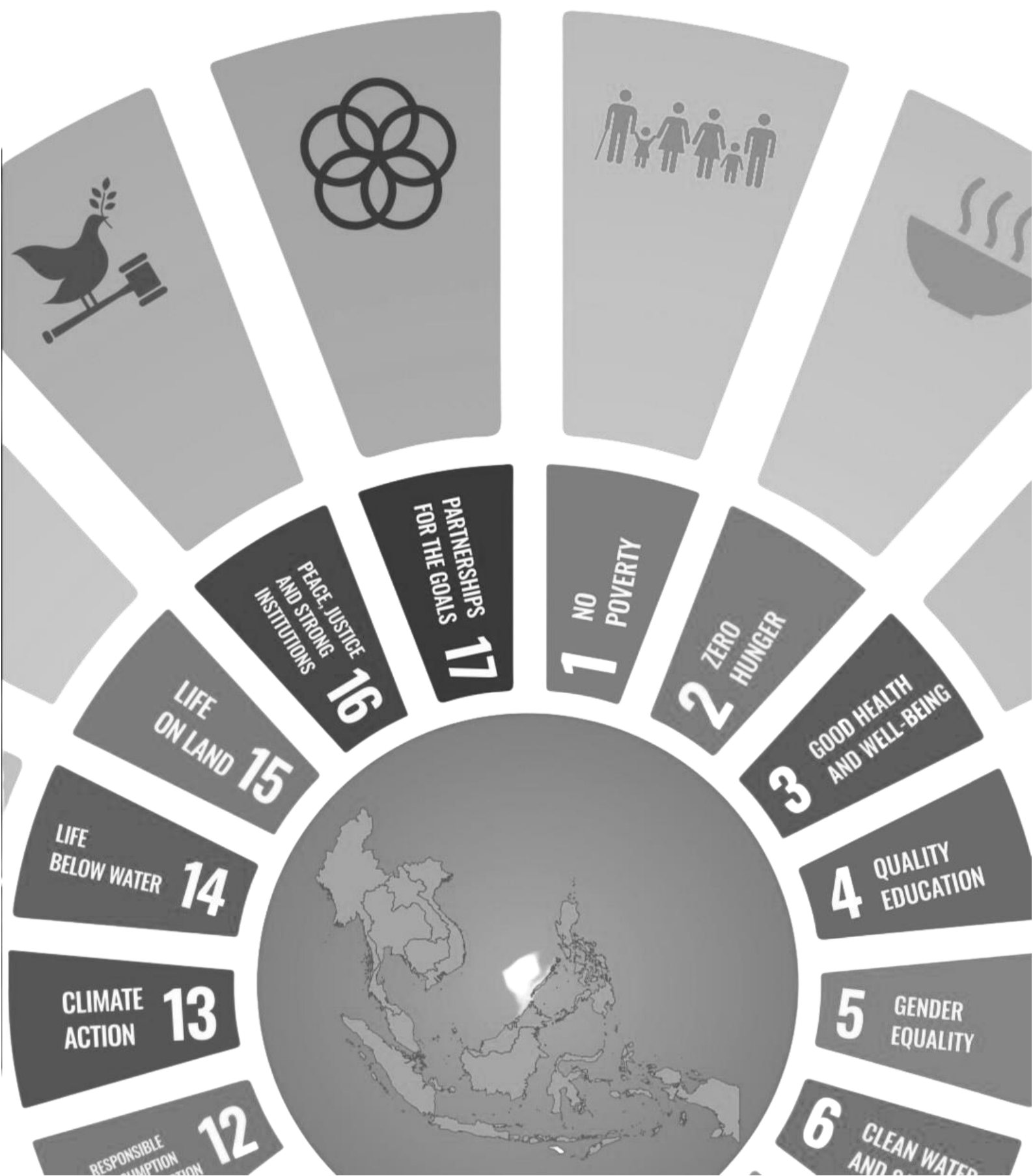


ASEAN SDG Bond Toolkit

Supplement: Legal and Regulatory Aspects for Malaysia



Introduction

Issuances of bonds and sukuk in Malaysia are regulated by the Securities Commission Malaysia (the “SC”) under the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (the “**LOLA Guidelines**”) and/or Guidelines on Issuance of Corporate Bonds and Sukuk to Retail Investors (the “**Guidelines on Retail Bonds and Sukuk**”) (collectively, the “**SC Guidelines**”). Issuance of unlisted bonds must comply with the LOLA Guidelines, while for retail bonds, compliance with the Guidelines on Retail Bonds and Sukuk is required.

Over the course of the years, the government of Malaysia has demonstrated its commitment towards green / sustainable financing by introducing regulations, incentives and initiatives to further develop the green bond/sukuk market in Malaysia.

The SC first introduced the Sustainable and Responsible Investment (“**SRI**”) Sukuk Framework in the SC Guidelines in 2015. Subsequently, the SC Guidelines were amended in November 2017 to facilitate issuances of ASEAN Green Bonds/Sukuk, and in October 2018, to facilitate issuances of ASEAN Social Bonds/Sukuk and ASEAN Sustainability Bonds/Sukuk.

In line with the growth in the global trend of green financing, the SC further introduced an SRI-linked Sukuk framework in June 2022, which contains provisions which incentivise the issuer’s achievement of pre-determined key performance indicators (“**KPIs**”). The issuer’s sustainability performance during the course of the sukuk is measured by its ability to meet specific sustainability performance targets (“**SPTs**”). Such SRI-linked sukuk therefore allows issuers which do not operate in a traditionally “green” industry or have specific green or sustainability projects to still contribute towards sustainability by aligning the terms of their sukuk with specific medium to long-term environmental, social and governance (“**ESG**”) targets.

Executive Summary

Malaysia issuers

Both private and public sector Malaysia issuers are allowed to issue SRI Sukuk, SRI-linked Sukuk, ASEAN Green / Social / Sustainability Bonds/Sukuk that adopt and satisfy the relevant prescribed standards set out in the ASEAN Green / Social / Sustainability Bond Standards issued by the ASEAN Capital Markets Forum and the SC Guidelines.

Incentives are available under the Green SRI Sukuk Grant Scheme, where qualifying issuers may be eligible for a grant of up to 90% of the external review costs for green SRI sukuk, subject to a maximum of RM300,000 per issuance.

Malaysia investors

Malaysia investors are allowed to invest in SRI Sukuk, SRI-linked Sukuk, ASEAN Green / Social / Sustainability Bonds/Sukuk in the same way as other bonds.

While there is no legal requirement for a prospectus / information memorandum to be issued for unlisted bonds/sukuk, a prospectus is generally mandatory where bonds/sukuk are offered to retail investors.

A. Information for Issuers in Malaysia

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

SC Guidelines

The SC Guidelines sets out general, specific and additional requirements that apply to SRI sukuk, including the core components of the SRI Sukuk Framework, namely:

- (i) utilisation of proceeds;
- (ii) the process for project evaluation and selection;
- (iii) management of proceeds; and
- (iv) reporting.

Under the SC Guidelines, a sukuk shall only be termed an “SRI Sukuk” if it has complied with all the relevant provisions and requirements set out in the said guidelines.

In June 2022, the SC amended the SC Guidelines to introduce SRI-linked sukuk. Similar to SRI sukuk, the SRI-linked Sukuk Framework under the SC Guidelines sets out additional requirements for a sukuk to qualify as an “SRI-linked sukuk”, namely:

- (i) financial and structural characteristics of the SRI-linked sukuk;
- (ii) KPIs of the issuer;
- (iii) SPTs of the issuer;
- (iv) external review on the issuer’s SRI-linked sukuk framework and verification of KPIs; and
- (v) the issuer’s obligation to report on the performance of the KPIs.





Where an issuer adopts the term “SRI sukuk” or “SRI-linked sukuk” without complying with all relevant requirements set out under the SC Guidelines, the SC may take relevant action.

ASEAN Green / Social / Sustainability Bonds/Sukuk

ASEAN Green / Social / Sustainability Bonds/Sukuk were introduced into the SC Guidelines in November 2017 and October 2018, in line with the issuance of standards on ASEAN Green / Social / Sustainability Bonds by the ASEAN Capital Markets Forum (the “ACMF”).

In addition to compliance with all requirements set out in the SC Guidelines, bonds/sukuk holding out to be “ASEAN Green Bonds/Sukuk”, “ASEAN Social Bonds/Sukuk” and/or “ASEAN Sustainability Bonds/Sukuk” must adopt the relevant prescribed standards set out in the ASEAN Green / Social / Sustainability Bond Standards issued by the ACMF.

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

	Private Placement¹ <i>Offers not made to the general public</i>	Public Placement² <i>Offers made to the public</i>
Private Entity Issuers <i>Private companies and other entities</i>	 Yes, subject to the conditions in Question 3 of Part A.	 Yes, subject to the conditions in Question 3 of Part A.
Public Sector Issuers <i>Government bodies and agencies</i>	 Yes, subject to the conditions in Question 3 of Part A.	 Yes, subject to the conditions in Question 3 of Part A.

¹ In this wrapper, this refers to unlisted bonds/sukuk.

² In this wrapper, this refers to retail bonds/sukuk.

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

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
Corporate form	Only a corporation within the meaning of subsection 2(1) of the Capital Markets and Services Act 2007 (the “CMSA”) or a foreign government is eligible to issue an unlisted bond/sukuk under the LOLA Guidelines. ³	Only issuers listed in section 4.01, Chapter 4, Part B of the Guidelines on Retail Bonds and Sukuk are eligible to issue bonds/sukuk to retail investors. This list includes public listed companies, licensed banks, and certain government-linked entities. Unlisted public companies are generally not allowed to issue bonds/sukuk to retail investors unless the bonds/sukuk are guaranteed by the earlier-mentioned entities.
Rating	Unlisted bonds/sukuk need not be rated. Where a ringgit-denominated bond/sukuk is rated or to be rated, the credit rating of such bond/sukuk must be provided by a credit rating agency registered with the SC. Where the unlisted bonds/sukuk are denominated in foreign currency, there is no requirement for the credit rating agency to be registered with the SC.	Save for issuances of bonds/sukuk set out in section 5.02 of the Guidelines on Retail Bonds and Sukuk ⁴ , all retail bonds/sukuk must be rated by a credit rating agency registered with the SC.
Prospectus information memorandum	There is no legal requirement for a prospectus / information memorandum to be issued for unlisted bonds/sukuk. However, it is common for an information memorandum to be prepared in the case of unlisted bonds/sukuk issued to sophisticated investors at large (as compared to an issuance to a specific investor/group of investors). Where an information memorandum is issued, prospectus liability will apply to such information memorandum.	A prospectus is required in respect of retail bonds/sukuk. Such prospectus must comply with the relevant requirements of the Prospectus Guidelines issued by the SC. Any person who authorises or issues a prospectus containing any false or misleading information or any statements where there is material omission would be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding 10 years or to both. ⁵ Issuers able to fulfil higher eligibility criteria (known as “Qualified Issuers”) may issue bonds/sukuk without a prospectus (subject to the preparation of a product highlight sheet). The eligibility criteria of Qualified Issuer are as follows: (i) issuer has issued or guaranteed bonds/sukuk of at least RM500 million in the past 5 years; and (ii) the bonds/sukuk to be issued must have minimum credit rating of AA- (or its equivalent).

³ Paragraph 1.03, Chapter 1, Part 3, Section B of the LOLA Guidelines.

⁴ Paragraph 5.02, Chapter 5, Part B of the Guidelines on Retail Bonds and Sukuk. This chapter does not apply to an issuance of the following:

- (a) Convertible loan stocks or Islamic loan stocks; and
- (b) Convertible bonds, sukuk, loan stocks or Islamic loan stocks, and exchangeable bonds or sukuk which fulfil the following requirements:
 - (i) Holders of such products are given the right to convert or exchange such products into underlying shares at any time or within a reasonable period(s) during the tenure of such products; and
 - (ii) The underlying shares are listed and quoted on a stock exchange.

⁵ Section 246 of the CMSA 2007.

<p>Conditions for issuance</p>	<p>Pursuant to section 212(5) of the CMSA, a person who intends to issue unlisted bonds is required to seek authorisation of the SC. Typically, this authorisation would come in the form of a letter issued by the SC.</p> <p>However, if the unlisted bonds/sukuk are issued in compliance with the requirements of the LOLA Guidelines (“LOLA Regime”), an issuer will only be required to lodge the said unlisted bonds/sukuk, and immediately thereafter, the unlisted bonds/sukuk can be issued.</p> <p>Paragraph 1.02 of Section A of the LOLA Guidelines provides that unlisted bonds/sukuk can only be offered to the list of persons described in paragraph 1 of Part 1, Schedule 5 of the CMSA, as follows:</p> <ul style="list-style-type: none"> (a) sophisticated investors (as specified in Part I of Schedule 6 or Part I of Schedule 7 of the CMSA); (b) a person who acquires the unlisted bonds/sukuk where the consideration is not less than RM250,000 or its foreign currency equivalent for each transaction whether such amount is paid for in cash or otherwise; (c) in the case of debentures or sukuk, exclusively to a person in Labuan or outside Malaysia;⁶ or (d) any other person as may be determined by the SC. <p>This restriction applies to any company, public or private, seeking to issue unlisted bonds/sukuk under the LOLA Regime.</p>	<p>In addition to unlisted bonds/sukuk, public listed corporations may also issue bonds/sukuk (which are listed on a stock exchange) to retail investors. Such listed corporations are required to obtain the approval of the SC prior to issuing such retail bonds/sukuk. Retail bonds/sukuk are regulated by the SC under the Guidelines on Retail Bonds and Sukuk. Compliance with the listing requirements of the relevant stock market (the “Listing Requirements”) issued by Bursa Malaysia Securities Berhad (“Bursa Securities”) will also be required.</p>
<p>Due diligence</p>	<p>The CMSA imposes criminal and civil liabilities for false or misleading statements contained in any disclosure document or a prospectus. This liability extends to the issuer, each of the directors of the issuer, and any other persons who was responsible in preparing or conducting the due diligence on the information contained in the prospectus or disclosure document.⁷</p> <p>Any person who acquires or subscribes for securities and suffers loss or damage due to any false or misleading information contained in the prospectus or disclosure document may recover the amount of loss or damage from the abovementioned persons.⁸ As such, a due diligence exercise is typically carried out as a defence to criminal and civil liabilities imposed by the law.⁹</p>	

⁶ The term “debentures” is defined in section 2(1) of the CMSA to include debenture stock, bonds, sukuk, notes and any other evidence of indebtedness of a corporation for borrowed monies.

⁷ Section 248 of the CMSA 2007.

⁸ Section 248 of the CMSA 2007.

⁹ Sections 246, 249 and 250 of the CMSA 2007.

Currency	<p>There are no specific restrictions on the currency denomination of bonds/sukuk. However, issuance of bonds/sukuk in the currency of Israel is not allowed without the approval of Bank Negara Malaysia (i.e. the Central Bank of Malaysia) (“BNM”).</p> <p>Pursuant to the foreign exchange policy notices issued by BNM (the “FEP Notices”), ringgit denominated bonds/sukuk can be offered to non-residents. While an issuance of tradable bonds/sukuk does not require the approval of BNM, an issuance of non-tradable bonds/sukuk by a resident to a non-resident entity outside the resident’s entity group of companies or a non-resident financial institution requires the approval of BNM.¹⁰</p> <p>In the case of foreign-currency denominated bonds/sukuk issued by residents, such bonds/sukuk are treated in a similar manner as loans obtained by a resident entity from a non-resident. Such issuance of bonds/sukuk shall generally be subject to a prudential limit of RM100 million equivalent in aggregate from non-resident financial institutions and other non-residents outside the resident entity’s group of companies.¹¹</p>
Lodgement	<p>(a) All issuances of bonds/sukuk must be lodged with the SC or, where applicable, receive the approval of the SC prior to issuance.</p> <p>(b) The lodgement of bonds/sukuk (in respect of unlisted bonds/sukuk) or submissions to the SC (in respect of retail bonds/sukuk) must be made either by a qualified bank or a qualified dealer directly with the SC or through a principal adviser.¹²</p>
Reporting	<p>(a) SRI sukuk: An issuer must provide annual reporting either via newsletters, designated websites, annual reports or any other communication channels to sukukholders on the following:</p> <ul style="list-style-type: none"> (i) the original amount earmarked for the Eligible SRI project (as defined in paragraphs 7.08 and 7.08 of the LOLA Guidelines); (ii) the amount utilised for the Eligible SRI project; (iii) the unutilised amount and where such unutilised amount is placed or invested pending utilisation; and (iv) where feasible and to the extent possible, the impact objectives from the Eligible SRI project. <p>(b) SRI-linked sukuk: An issuer must publish the following information on the designated website:</p> <ul style="list-style-type: none"> (i) up-to-date information on the performance of the selected KPIs, including baselines, where relevant; and (ii) relevant information to enable sukukholders to assess and monitor the progress or relevancy of the selected KPIs and SPTs including any changes to the issuer’s sustainability, business and ESG strategy that may impact the KPIs and SPTs.
Specific requirements for public companies	<p>Selling Restrictions under section 2(6) of the Companies Act 2016: In addition to the selling restrictions under the LOLA Guidelines, private limited companies are subject to further selling restrictions under section 2(6) of the Companies Act 2016. Subject to the exceptions in the subsection, section 2(6) and 43(1) of the Companies Act 2016 restrict private limited companies from offering bonds/sukuk to the public or any section of the public. In contrast, issuers which are public companies are not subject to such restrictions and may offer such bonds/sukuk to the public.</p> <p>Listing Requirements: An issuance of listed bonds/sukuk must comply with the Listing Requirements. An issuer must submit its listing application under the Listing Requirements through the relevant principal adviser and comply with the relevant admission procedures and requirements as prescribed by Bursa Securities.¹³</p>

¹⁰ Paragraph 7, Part B, Notice 2 of the FEP Notices.

¹¹ Paragraph 10, Part B, Notice 2 of the FEP Notices.

¹² “Qualified bank” and “qualified dealer” shall have the meanings as defined in section 2.01 of the LOLA Guidelines. Section 7A.03 of the Licensing Handbook issued by the SC also sets out an exhaustive list of entities that are eligible to act as principal advisers, including but not limited to licensed banks, Islamic banks and investment banks.

¹³ Paragraph 4B.05, Part C1, Chapter 4B of the Listing Requirements.

	<p>Issuances of unlisted or listed bonds/sukuk which are convertible or exchangeable into listed shares must comply with additional requirements set out in the Listing Requirements.¹⁴ For example, issuers of convertible bonds/sukuk may be required to ensure that the number of new shares which will arise from the exercise or conversion of all outstanding convertible equity securities does not exceed 50% of the total number of issued shares of the listed issuer at all times.</p> <p>In addition, a listed issuer must also ensure that a draft circular to the securities holders of the listed issuer is submitted to Bursa Securities together with a checklist showing compliance with the relevant Listing Requirements to obtain the approval of shareholders in respect of the issuance of convertible securities, and that such circular complies with the Listing Requirements.¹⁵</p> <p>Where the issuance of convertible bonds/sukuk departs from the applicable requirements stipulated in paragraph 6.04, Chapter 6 of the Listing Requirements, e.g. the convertible bonds/sukuk are issued to an interested director, interested major shareholder, interested chief executive or interested person connected with a director, major shareholder or chief executive (collectively, the “Interested Persons”), the listed issuer must obtain the prior approval of its shareholders in a general meeting for the precise terms and conditions of the issue. In the event the convertible bonds/sukuk are issued to Interested Persons and where the allotment is in favour of the Interested Persons, such Interested Persons must abstain from voting on the resolution approving the said allotment.</p> <p>Further, any meetings of sukuk or debt securities holders must be announced to Bursa Securities at least 14 days before the meeting is held, and where a meeting is convened to pass a special resolution, such meeting must be announced to Bursa Securities at least 21 days before such meeting is held.</p> <p>On the contrary, as private companies are not allowed to issue listed bonds, the Listing Requirements are not applicable to private companies.</p>
Specific requirements for public sector issuers	<p>Foreign Exchange Policy Notices: Issuances of Ringgit-denominated bonds/sukuk by the Government of Malaysia to investors located outside of Malaysia do not require the approval of BNM.¹⁶</p> <p>Approval of the SC: Issuances of bonds/sukuk by the Government of Malaysia (i.e. the Federal Government), BNM or any State Government do not require the approval, authorisation or recognition of the SC.¹⁷ A full list of the exempted entities and transactions can be found in Part 2 of Schedule 5 of the CMSA. Issuances of listed bonds/sukuk that are issued by the Government of Malaysia or BNM on a stock market of a stock exchange are also exempted from the requirement to obtain authorisations from the SC.¹⁸</p> <p>Trust Deed and Trustee: Companies issuing bonds/sukuk are generally required to enter into a trust deed in compliance with the CMSA and appoint a trustee who is a person eligible to be appointed or in accordance with the requirements under the CMSA.¹⁹ However, bonds/sukuk issued by the Government of Malaysia, BNM, any State Government or any statutory body are not required to comply with these requirements.²⁰</p>
Specific requirements for foreign issuers	<p>Issuance: Companies incorporated outside of Malaysia are only allowed to issue unlisted bonds/sukuk under the LOLA Regime. They are not allowed to offer bonds/sukuk to retail investors.</p> <p>Currency: Other than borrowings to finance a real sector activity in Malaysia or borrowings from a licensed onshore bank, foreign issuers intending to issue ringgit-denominated bonds/sukuk would generally be required to obtain the approval of BNM.²¹ In the case of a resident investor investing in ringgit-denominated bonds/sukuk issued by foreign issuers, approval of BNM would not be</p>

¹⁴ Paragraph 4B.05, Part C1, Chapter 4B and Part I, Chapter 6 of the Listing Requirements.

¹⁵ Paragraph 4B.05, Part C1, Chapter 4B and paragraphs 6.49 to 6.58, Chapter 6 of the Listing Requirements.

¹⁶ Paragraph 7(b), Part B of Notice 2 of the FEP Notices.

¹⁷ Subparagraph 4(a) and 4(b), paragraph A(i) of Part 2, Schedule 5 of the CMSA.

¹⁸ Subparagraph (2)(a), paragraph A(i) of Part 2, Schedule 5 of the CMSA.

¹⁹ Section 258 of the CMSA.

²⁰ Sections 257 to 283 of the CMSA.

²¹ Paragraph 14 and 15, Part D of Notice 2 of the FEP Notices.

required. However, where a resident investor (with domestic Ringgit borrowing) intends to invest in foreign currency-denominated bonds/sukuk issued by foreign issuers, the investment of the foreign currency-denominated bonds/sukuk will generally be subject to a RM50 million limit per calendar year, subject to certain exceptions, e.g. the funds utilised for such investment are sourced from foreign currency funds or from a foreign currency borrowing from a LOB for Direct Investment Abroad (as defined in Notice 3 of the FEP Notices).²²

Rating: Unlike ringgit-denominated rated bonds/sukuk which require credit ratings to be provided by credit rating agencies that are registered with the SC, there are no similar requirements for foreign-currency denominated bonds/sukuk.

Compliance with the LOLA Guidelines: Foreign currency-denominated bonds/sukuk are not required to comply with certain requirements of the LOLA Guidelines, e.g., requirement for the tenure of a commercial paper (“CP”) or combination of both CP and medium term note programme to not exceed seven (7) years; disclosures on redemption and call option; and compliance with Shariah rulings.

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

SRI Sukuk and Bond Grant Scheme (formerly known as the Green SRI Sukuk Grant Scheme)

The Green SRI Sukuk Grant Scheme was established in 2018, aimed at encouraging more issuances of green SRI sukuk under the SC’s SRI Sukuk Framework by defraying a portion of the costs of external reviews, where qualifying issuers may be eligible for a grant of up to 90% of the external review costs for green SRI sukuk, subject to a maximum of RM300,000 per issuance.²³

In 2021, the scope of the Green SRI Sukuk Grant Scheme was expanded to encourage more companies to finance green, social and sustainability projects through SRI sukuk and bonds issuances. With the expansion, the Green SRI Sukuk Grant Scheme was renamed as the SRI Sukuk and Bond Grant Scheme, and is applicable to all sukuk issued under the SRI Sukuk Framework or bonds issued under the ASEAN Green, Social and Sustainability Bond Standards (ASEAN Standards).

On 23 August 2022, the SRI Sukuk and Bond Grant Scheme’s scope has been further expanded to include issuances under the SC’s SRI-linked Sukuk Framework, to facilitate companies to issue sukuk to meet their sustainable finance needs, as well as to support the transition to low carbon.

To date, the SRI Sukuk and Bond Grant Scheme is available in respect of the following issuances:

- (i) Green SRI sukuk issuances made under the SC’s SRI Sukuk Framework from January 2018 onwards;
- (ii) Social, sustainability or other SRI sukuk issuances made under the SC’s SRI Sukuk Framework from 25 August 2020 onwards;
- (iii) Bond issuances made under the ASEAN Green / Social / Sustainable Standards from 29 October 2020 onwards; and
- (iv) Sukuk issuances under the SC’s SRI-linked Sukuk Framework from 8 August 2022 onwards.

Income tax exemption on the SRI Sukuk and Bond Grant Scheme

As announced in the 2018 Budget, recipients of the Green SRI Sukuk Grant Scheme were exempted from income tax for applications received by the SC beginning 1 January 2018 to 31 December 2020. In the 2021 Budget, the income tax exemption was expanded in line with the expansion of the scope of the SRI Sukuk and Bond Grant Scheme, and was also extended for an additional five years, i.e. for the years of assessment 2021 until 2025 for applications received by the SC from 1 January 2021 to 31 December 2025.²⁴

Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) (Amendment) Rules 2021

Tax deduction is also available for expenditure incurred on the issuance or offering of SRI sukuk approved, authorised or lodged with the SC from the years of assessments 2016 until 2020. This was further extended from the years of assessments 2021 until 2023. The deduction is only applicable to SRI sukuk where 90% of proceeds raised from the issuance or offering of the SRI sukuk are used solely for the purpose of funding SRI projects as

²² Paragraph 3 and 4, Part B of Notice 3 of the FEP Notices.

²³ SRI Sukuk & Bond Grant Scheme, < <https://www.msfi.com.my/incentives-sri-sukuk-and-bond-grant-scheme/>>.

²⁴ Sustainable and Responsible Investment (SRI), < <https://www.capitalmarketsmalaysia.com/public-sri-sukuk/>>.

specified in the guidelines issued by the SC.²⁵

Green Technology Financing Scheme 3.0 (GTFS 3.0)

Under the GTFS 3.0, Danajamin Nasional Berhad will provide guarantee coverage for any funding raised via the capital market for any project that qualifies under the GTFS 3.0 program.²⁶ The GTFS 3.0 was allocated a budget of RM2 billion until 2022 and is open to all Malaysian companies with green/SRI project financing that contributes towards Malaysia's sustainable development agenda. Evidence of proven business model and technology is required to ensure that viable projects are funded.

5. Other comments

Issuances of SRI Sukuk, SRI-linked Sukuk, ASEAN Green / Social / Sustainability Bonds/Sukuk are based on the following principles and standards:

- (a) International Capital Market Association Sustainability-Linked Bond Principles 2020;
- (b) International Capital Market Association Green Bond Principles 2021;
- (c) International Capital Market Association Social Bond Principles 2021;
- (d) International Capital Market Association Sustainability Bond Guidelines 2021;
- (e) ASEAN Capital Markets Forum ASEAN Green Bond Standards 2018;
- (f) ASEAN Capital Markets Forum ASEAN Social Bond Standards 2018; and
- (g) ASEAN Capital Markets Forum ASEAN Sustainability Bond Standards 2018.

²⁵ Incentives, < <https://www.sc.com.my/development/icm/incentives>>.





²⁶ Green Technology Financing Scheme 3.0, <<https://www.danajamin.com/business/green-technology-financing-scheme/>>.

B. Information for Investors in Malaysia

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

All issuances of bonds/sukuk are subject to compliance with the LOLA Guidelines or the Guidelines on Retail Bonds and Sukuk. There are no exemptions for the issuance of SRI sukuk, ASEAN Green / Social / Sustainability bonds/sukuk or SRI-linked sukuk. Such bonds/sukuk are subject to the same minimum requirements applicable to bonds/sukuk. Please see our responses in the sections above.

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

		Private Placement	Public Placement
		<i>Offers not made to the general public</i>	<i>Offers made to the public</i>
Within the jurisdiction		 Yes, subject to compliance with the FEP Notices (where applicable).	 Yes, subject to compliance with the FEP Notices (where applicable).
Outside the jurisdiction	the	 Yes, subject to compliance with the FEP Notices (where applicable).	 Yes, subject to compliance with the FEP Notices (where applicable).

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

As discussed under Question 4 of Part A above, there are numerous incentives for the issuances of SRI sukuk, ASEAN Green / Social / Sustainability bonds/sukuk and/or SRI-linked sukuk. However, to date, we are not aware of any incentives applicable to a purchaser of SRI sukuk, ASEAN Green/ Social / Sustainability bonds/sukuk and/or SRI-linked sukuk.

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

As mentioned in the section "Prospectus / information memorandum" under Question 3 of Part A above, there is no legal requirement for a prospectus / information memorandum to be issued for unlisted bonds/sukuk.

A prospectus is mandatory where bonds/sukuk are offered to retail investors. However, issuers who are able to fulfil a higher eligibility criteria (known as "Qualified Issuers") may issue bonds/sukuk without a prospectus (subject to preparation of a product highlight sheet). The eligibility criteria of Qualified Issuers are as follows:

- (i) issuer has issued or guaranteed bonds/sukuk of at least RM500 million in the past five (5) years; and
- (ii) the bonds/sukuk to be issued must have minimum credit rating of AA- (or its equivalent).

C. Notable developments

Climate Change Principle-based Taxonomy

The Climate Change and Principles-based Taxonomy (CCPT) introduces a principle-based taxonomy for financial institutions to assess and categorise economic activities of their customers according to the extent to which their customers' activities meet climate objectives and promote the transition to a low-carbon economy. Guided by five guiding principles, the CCPT is expected to be embedded within the due diligence assessment of existing and prospective customers of financial institutions.

While there is currently no official announcement from BNM to mandate compliance with the CCPT, the first series of training programmes covering the implementation and application of the CCPT has already been completed. We understand that financial institutions have demonstrated capability to classify new financing and investments based on the CCPT classification and had submitted the first reporting to BNM in July 2022.

Principles-Based SRI Taxonomy for the Malaysian Capital Market

In line with the recommendation of the SC's SRI Roadmap for the Malaysian Capital Market, the SC is currently developing the Principles-Based SRI Taxonomy, to enable capital market participants to identify economic activities that are aligned with environment, social and sustainability objectives, thus facilitating a more informed and efficient decision-making for fundraising and investment. The Principles-Based SRI Taxonomy was released for public consultation in December 2021 for a period of three months to 31 March 2021, and is targeted to be finalised by end 2022.



About Ashurst

Ashurst is a leading international law firm with 30 offices in 20 countries and regions, and offers the reach and insight of a global network, combined with the knowledge and understanding of local markets. With over 450 partners and a further 2,000 lawyers working across 11 different time zones, the firm is able to respond to clients wherever and whenever required.

In Singapore, through our Formal Law Alliance, known as Ashurst ADT Law, we are able to provide the full breadth of Singapore and international law services from one integrated platform.

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