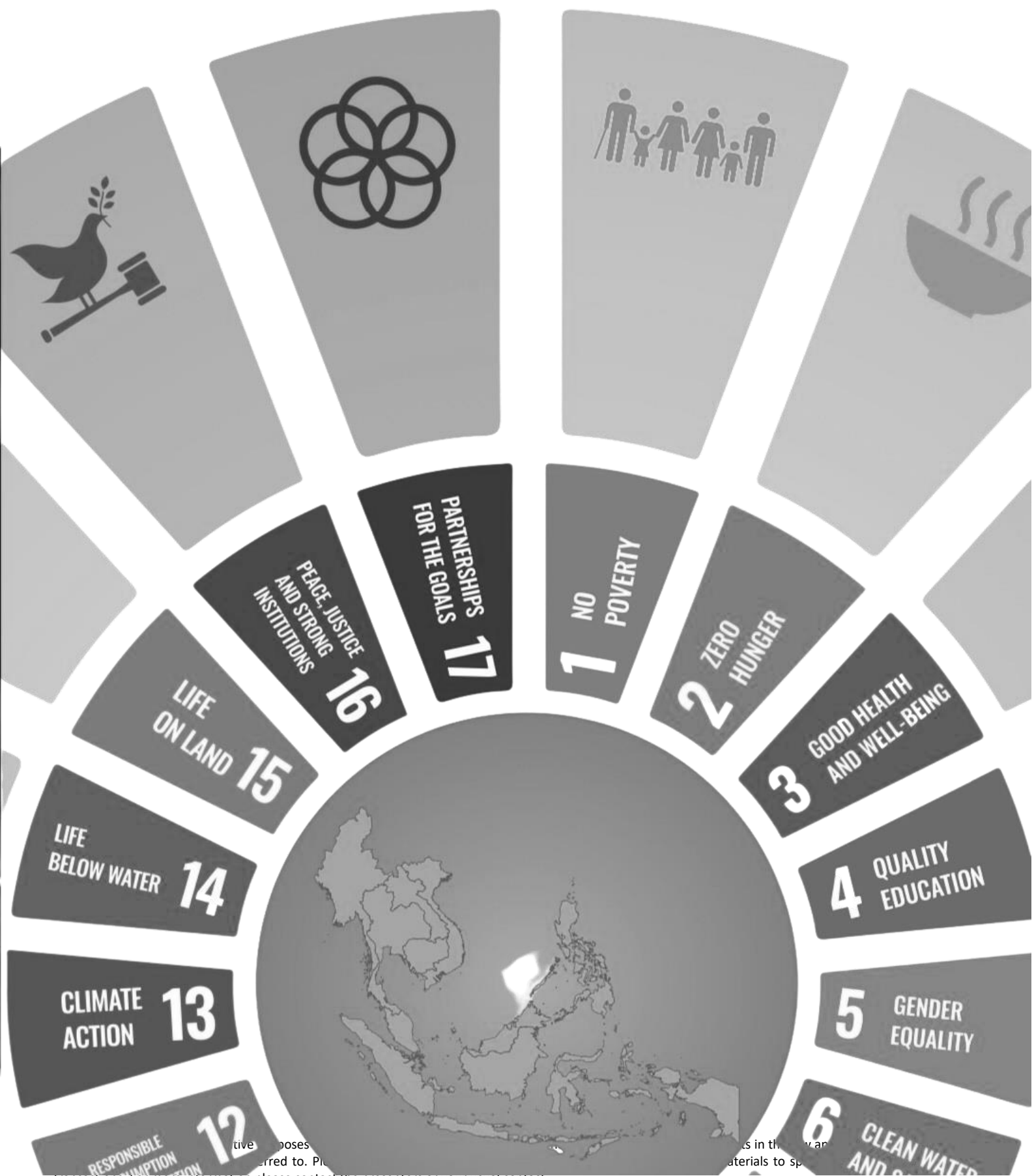


ASEAN SDG Bond Toolkit

Supplement: Legal and Regulatory Aspects for Myanmar



...tive purposes... referred to. Please refer to the materials to support... transactions. For more information please contact the presenters or your usual contact.

Prepared by Allen & Gledhill (Myanmar) Co., Ltd.

Edited by Ashurst LLP

Introduction

Myanmar is at a very nascent stage in the development of its bond market. While the Government of Myanmar has been issuing treasury bonds since 1993, Myanmar does not presently have specific regulation for corporate bond issuances and a defined corporate bond market does not yet exist. Owing to the current stage of the securities market development in Myanmar, there are currently no specific requirements for green, social and sustainability bonds ("**GSS Bonds**") issuances.

Executive Summary

Myanmar issuers

Both private entity and public sector Myanmar issuers are allowed to issue GSS and SDG Bonds. There are no mandatory requirements for issuances of GSS/SDG Bonds, and the usual requirements for the issuances of bonds apply.

Myanmar investors

Myanmar investors are allowed to invest in GSS and SDG bonds in the same way as non-GSS/SDG bonds.

Offers of GSS/SDG Bonds do not have specific requirements that they must comply with. Prospectus exemptions need to be invoked for private placements.

A. Information for Issuers in Myanmar

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

No. General regulations applicable to issuances of bonds will apply.

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

| | Private Placement ¹ <i>Offers not made to the general public</i> | Public Placement ² <i>Offers made to the public</i> |
|--|--|---|
| Private Entity Issuers³ <i>Private companies and other entities</i> | Yes, if an exemption from Securities and Exchange Commission of Myanmar ("SECM") approval and prospectus requirement can be invoked. | Yes, with the approval of the SECM. |
| Public Sector Issuers⁴ <i>Government bodies and agencies</i> | Yes. | Yes. |

3. What key requirements must issuers in Myanmar 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 | The issuer must be a public company incorporated in Myanmar that is able to invoke exemptions from SECM approval and prospectus requirements. ⁵ | The issuer must be a public company incorporated in Myanmar. |
| Currency | May be issued in the local currency (Myanmar Kyat) only. | |
| GSS specific requirements | None. | None. |
| Listing on the Yangon Stock Exchange ("YSX") | It is not currently possible for bonds to be listed on the YSX, whose regulations currently only cater for the listing of equities. | |
| Requirement for SECM approval and prospectus | None, subject to the exemptions from SECM approval and prospectus requirements being invoked. | Bond issuances and the related prospectus must receive the prior approval of the SECM. The prospectus must meet the requirements as prescribed under the Securities Exchange Law 2013 of Myanmar ("SEL"), its subsidiary legislation and the Myanmar Companies Law 2017. ⁶ |
| Other general requirements | The issuer must notify SECM within 10 business days of the issuance. | (a) Submission of the prospectus (that has been approved by the SECM) to Directorate of Investment and Company |

¹ "Private issuances" are issuances which are not offered generally to the public in Myanmar.

² "Public issuances" are issuances which are made generally available to the public in Myanmar.

³ "Private entity issuer" means a public company in Myanmar which is a separate legal entity from its shareholders.

⁴ "Public sector issuer" means the Myanmar government or a governmental entity in Myanmar.

⁵ Rule 107 of the SER; Notification No. 1/2020 dated 15 May 2020 issued by the SECM ("Notification 1/2020").

⁶ Rule 109 of the SER; Notification No. 2/2015 dated 14 September 2015 issued by the SECM ("Notification 2/2015"); and Section 205 of the Myanmar Companies Law 2017.

| | | |
|--|---|---|
| | | <p>Administration of Myanmar as the corporate regulator.</p> <p>(b) The annual, half-yearly and extraordinary (if applicable) reports required to be provided as part of the issuer's ongoing disclosure obligations must be in both the Myanmar and English languages.</p> <p>(c) Submission to the SECM of the result of the public offering immediately upon its conclusion.⁷</p> |
| Listing requirements | None. | The issuer will have continuous disclosure obligations under which it is required to, <i>inter alia</i> , submit to SECM extraordinary reports (if applicable) ⁸ , annual reports and biannual reports. |
| Specific requirements for public sector issuers | A public sector issuer is not subject to the issuance regulations under the SEL outlined above, instead issuances by a public sector issuer are made pursuant to the Public Debt Management Law 2016. Generally, bonds issued by public sector issuers are sold by the Central Bank of Myanmar ("CBM") through auctions to auction participants only (who must be financial institutions registered as counterparties with CBM) pursuant to the CBM's remit under the Central Bank of Myanmar Law 2013. | |
| Specific requirements for foreign issuers | While there are no specific distinctions made in legislation between domestic and foreign issuers, currently only domestic issuers can issue bonds in the absence of specific provisions regulating foreign issuers' participation in the Myanmar bond market. | |

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

No. There are no regimes offering incentives to encourage issuances of GSS Bonds.

5. Other comments

While the regulators' focus would be to first develop the bond market in Myanmar on which a GSS Bond and/or SDG Bond market can then be founded, such development should be driven with international standards on sustainable finance as a key consideration.

⁷ Section 4(e) of Notification No. 2/2015.





⁸ Section 4 of Notification No. 1/2016 dated 19 February 2016 issued by the SECM.

B. Information for Investors in Myanmar

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

There are no other mandatory requirements for the offer of for GSS or SDG Bonds to investors in Myanmar. Please see the key requirements for issuances (Question 2 of Part A) and key prospectus exemptions (Question 4 of Part B).

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

| | Private Placement <i>Offers not 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. Subscription under a private placement may be limited to “qualified investors” only – please see Question 4 of Part B. |  Yes. There is no restriction on subscription under a public placement. |
| Public Sector Issuers <i>Government bodies and agencies</i> |  Yes. Subscription under a private placement may be limited to “qualified investors” only – please see Question 4 of Part B. |  Yes. There is no restriction on subscription under a public placement. |

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

No. There are no specific incentives for GSS or SDG bonds.

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

A private entity issuer may enjoy exemptions from SECM approval and prospectus requirements for certain types of bond issuances under the Securities Exchange Rules (Notification No. 1806/2015 dated 27 July 2015) issued by the SECM (“SER”). Some key exemptions are set out below:

- Offers made to “qualified” investors:**⁹ securities to be offered and sold to specified qualified investors which include banks, securities companies, insurance companies and investors making investments in the securities of at least MMK300 million per purchase, etc.; and a further transfer of these securities to other qualified investors except that these securities cannot be transferred to any other persons.
- Offers made on a “private placement” basis:**¹⁰ securities to be offered and sold to less than 50 investors (who are not persons determined as qualified) and a further transfer of all of these securities to another single investor except that these securities cannot be transferred to any other persons.
- Small offerings:**¹¹ the total value of the securities of the same kind offered in a six-month period does not exceed MMK500 million.

D. Notable developments

None.

⁹ Rule 107(a) of the SER; Section 3 of Notification 1/2020.

¹⁰ Rule 107(b) of the SER.

¹¹ Rule 107(c) of the SER; Section 7 of Notification 1/2020.



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Ashurst Key Contacts

Anna-Marie Slot

Global Environmental, Social and Governance Partner
T +44 20 7859 3724
M +44 7788 710 892
anna-marie.slot@ashurst.com

Jean Woo

Office Managing Partner, Singapore
T +65 6416 3345
M +65 9728 8945
jean.woo@ashurst.com

Lee Jini

Partner, Co-Division Head FFR and Head of Region (Asia), Hong Kong
T +852 2846 8977
M +852 9630 1752
jini.lee@ashurst.com

About Allen & Gledhill (Myanmar) Co., Ltd.

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Allen & Gledhill (Myanmar) advised both commercial and multilateral development banks on the development of a bond market, as well as on the formation of a bond association, in Myanmar.

Allen & Gledhill (Myanmar) Co., Ltd. Key Contacts

Minn Naing Oo

Managing Partner
M +95 1 925 3717
M +65 6890 7619
minn.naingoo@allenandgledhill.com

Lee Jun Yee

Senior Foreign Associate
M +95 1 925 3717
lee.junyee@allenandgledhill.com