RAJAH & TANN ASIA

LAWYERS WHO KNOW ASIA

A GUIDE TO SUSTAINABLE FINANCING IN SOUTHEAST ASIA

RAJAH & TANN ASIA

CAMBODIA | CHINA | INDONESIA | LAOS | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIETNAM

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FOREWORD

The COVID-19 pandemic has brought about a renewed realisation on how existential threats can debilitate the global economy. With this, issues affecting sustainability, climate change, social economics and governance have taken on a new priority in the agenda of governments, industries and businesses.

This renewed focus is aligned with what has been already a growing investment trend and corporate behaviour in recent years – where corporates have started to look beyond short-term returns, often derived from behaving in an insular profit maximising manner, and focus on environmental, social and governance ("**ESG**") factors for long-term sustained growth.

Adequate financial support is important to support the achievement of sustainability and ESG targets. The financial sector is a bedrock for the growth of sustainability. To this end, there has been a global push for financing products that incorporate elements of environmental protection and performance-based sustainability linked targets known as "green loans", "sustainability linked loans", "green bonds" and "sustainability linked bonds".

In the ASEAN region, green loans, sustainability linked loans ("**SLLs**"), green bonds and sustainability linked bonds ("**SLBs**") (collectively, "**Sustainable Financing**") are gaining traction, with some central banks taking steps to promote Sustainable Financing.[1] Market participants have also seen advantages in using Sustainable Financing as a funding tool. For a borrower, an improved ESG outlook is an indication to its stakeholders that the company has considered its risk factors holistically, in that not only are financial risks considered, other risks such as ESG risks are also incorporated into its business risks analysis. Such a progressive approach wins mainstream acceptance, and results in enhanced corporate profits and long-term sustainability. For lenders, deploying capital based on an ESG focus means the long-term sustained growth targets of borrowers arising from their ESG investments may help to decrease risk across the lenders' portfolio.

[1] For example, the Green Finance Action Plan launched by the Monetary Authority of Singapore to "support a sustainable Singapore and facilitate Asia's transition to a sustainable future" and the Indonesian Financial Services Authority (or known as OJK) launched the Sustainable Finance Roadmap in 2014 and is now in Phase II of the Roadmap that focuses on the creation of a comprehensive sustainable finance ecosystem that integrates ESG aspects.

Sustainable Financing has a broad application and is not only extended to companies carrying on business in the green sector or economy, e.g. renewable energy, but it is also made available and perhaps even more importantly to companies which are seeking to improve their ESG standing. This is because one of the features of Sustainable Financing is to bring about positive ESG changes, whether by way of mandatory use of proceeds for an environmental cause, or in compliance with certain sustainability performance targets ("**Sustainable Performance Targets**"). In the oil and gas sector, some of the major oil players in the world and region have committed themselves to a net zero future, e.g. Sinopec, BP, Shell and Petronas have set a 2050 target to do so, and Sustainable Financing can be an avenue which may be tapped to further aid in their transition to becoming a more sustainable business/industry.

Also present in the Sustainable Financing landscape are green bonds and SLBs. Interestingly, the profile of issuers of SLBs has been quite diverse. Other than being in the usual renewables, oil and gas and real estate sectors, SLBs are also being issued by companies in industries whose products are coveted by more ethically conscious consumers who plan their spending based on the companies' performance in ESG-related issues. This can be seen in the SLB issuance by Swedish clothing retailer Hennes & Mauritz AB (H&M),[2] where interest payable under the bonds will be increased if key performance indicators such as the use of recycled materials or greenhouse gas emissions, are not met.

In ASEAN, whilst we sense that there is a significant interest in Sustainable Financing, it appears that there is gap between the level of interest in Sustainable Financing and the number of actual Sustainable Financing transactions. We surmise that this may be due to the lack of knowledge and confidence of market participants about these emerging products in the ASEAN jurisdictions and the respective legal frameworks governing them. To provide a better understanding of the Sustainable Financing landscape in ASEAN, this Guide gives a brief overview of Sustainable Financing and the stage of its development in the countries where our Rajah & Tann Asia network has offices.[3]

GREEN LOANS AND SUSTAINABILITY LINKED LOANS

In the Asia Pacific region, the common frameworks used by market participants involved in Sustainable Financing are the Green Loan Principles[4] and the Sustainability Linked Loan Principles[5] issued by the Asia Pacific Loan Market Association ("**APLMA**"), the Loan Market Association ("**LMA**") and the Loan Syndications and Trading Association ("**LSTA**").

Green Loans

A "green loan" is a loan which proceeds would have to be applied towards green projects. Green projects are defined in the Green Loan Principles to include renewable energy and energy efficiency projects, clean transportation projects, sustainable water and wastewater management, climate change adaptation purposes and green buildings.

Under the Green Loan Principles framework, the characteristics of a green loan is based on the following four components:

(a) **Use of proceeds**: The use of proceeds of the loan must be for green projects (including other related and supporting expenditure like research and development).

[2] H&M press release "H&M Group's sustainability work attracts bond market attention" (18 February 2021).
[3] Rajah & Tann Asia is a network of member firms with local legal practices in Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes our regional office in China as well as regional desks focused on Brunei, Japan and South Asia. This Guide covers the Sustainable Financing initiatives in our nine member firms in Asean.
[4] APLMA, LMA and LSTA, "Green Loan Principles" (February 2021); APLMA, LMA and LSTA, "Guidance on Green Loan Principles" (February 2021).
[5] APLMA, LMA and LSTA, "Sustainability Linked Loan Principles" (May 2020); APLMA, LMA and LSTA, "Guidance on Sustainability Linked Loan Principles" (May 2020).

(b) **Process for project evaluation and selection**: The borrower's environmental sustainability objectives and the process by which the borrower determines how its projects qualify for green projects must be clearly communicated and disclosed to the lenders.

(c) **Management of proceeds**: The proceeds of a green loan should be credited to a dedicated account or tracked by the borrower.

(d) **Reporting**: The borrower's reporting on the use of the green loan proceeds must be readily available and up to date.[6]

The loan documentation would reflect these components as covenants to be undertaken by the borrower. So far, our experience for green loans made pursuant to the Green Loan Principles framework is that a failure to comply with such "green" covenants by the borrowers would not result in an event of default. It would instead be "declassified" as a green loan, in which case no party to the loan can publicise its loan as a "green loan".

Sustainability Linked Loans

Unlike a green loan, proceeds from an SLL need not be applied towards a green project. An SLL is a loan which contains provisions to motivate the borrower to achieve certain Sustainable Performance Targets that are mutually agreed between the lender and borrower. The Sustainable Performance Targets should be material and ambitious[7] goals which are not easily attainable in the ordinary course of the borrower's business. The loan terms should be aligned with the Sustainable Performance Targets to incentivise the borrower to improve its sustainability profile.[8]

Under the Sustainability Linked Loan Principles framework, the characteristics of a SLL is based on the following five core components:[9]

(a) **Selection of Key Performance Indicators ("KPIs")**: The loan terms of a SLL should be in reference to the sustainability performance of the borrower which is measured by one or more predefined sustainability KPIs. The selection of KPIs is therefore very important. The borrower should communicate with the lenders its sustainability strategy and the rationale for the selection of the KPIs. The KPIs must be relevant, material and core to the borrower's business. The KPIs should also be suitably meaningful, measurable, externally verifiable and able to be benchmarked[10].

(b) **Calibration of Sustainable Performance Targets**: The calibration of Sustainable Performance Targets per KPI is an expression of the level of ambition which the borrower is ready to commit. It is important that Sustainable Performance Targets be amibitious, and represent a material improvement in the respective KPIs. The targets should be based on recent performance levels and on a combination of benchmarking approaches, consisting of: (i) the borrower's own performance over a minimum of a three-year period, (ii) the borrower's peers (i.e. the borrower's Sustainable Performance Targets' relevative positioning as compared to its peers) or current industry or sector standard, and/or (iii) reference to the science (i.e. systematic reference to science-based scenarios) or absolute levels (e.g. carbon budgets) or to official country/regional/international targets, or to recognised best-available-technologies or other proxies to determine relevant targets across ESG themes. Disclosures on target setting should make clear the timelines for the target achievement, where relevant, the verifed baseline or science-based reference point selected, the situations in which adjustments may be requried to be made, how the borrower

[6] APLMA, LMA and LSTA, "Green Loan Principles" (February 2021).
[7] APLMA, LMA and LSTA, "Sustainability Linked Loan Principles" (May 2020).
[8] *Ibid.*
[9] *Ibid.*
[10] APLMA, LMA and LSTA, "Sustainability Linked Loan Principles" (May 2021); APLMA, LMA and LSTA, "Guidance on Sustainability Linked Loan Principles" (May 2021).

intends to reach the Sustainable Performance Targets and any other key factors beyond the borrower's direct control that may affect the achievement of the Sustainable Performance Targets.

(c) **Loan Characteristics:** This relates to the economic outcome when a Sustainable Performance Target is met. For example, the margin of a loan may be reduced or financial covenant may be relaxed when a Sustainable Performance Target is met.

(d) **Reporting**: Reporting should be done at least annually and should provide the lenders with sufficient up-to-date information to allow them to monitor the performance of Sustainable Performance Targets and to determine that such targets remain ambitious and relevant to the borrower's business. The information should also, to the extent possible, provide details of any underlying methodology of Sustainable Performance Targets calculations and/or assumptions.

(e) **Verification:** An external review is recommended as a pre-signing deliverable, and thereafter, on an annual basis. It should be a requirement (not merely a recommendation) for a borrower to obtain independent and external verification of the borrower's performance level against each Sustainable Performance Targets for each KPI.

Examples of Sustainable Performance Targets cited in the Sustainability Linked Loan Principles include improvements in the energy efficiency rating of buildings and machinery, reductions in greenhouse gas emissions, water savings by the borrower, increases in the number of affordable housing units developed by the borrower, increases in the use of verified sustainable raw materials/supplies and improvements in sourcing/producing sustainable products and quality products.

Both the Green Loan Principles and Sustainability Linked Loan Principles emphasise the need to report on the use of the proceeds of green loans or on the Sustainable Performance Targets of SLLs to the lenders, with SLLs having an additional component, i.e. the review of the borrower's performance against the Sustainable Performance Target.[11] Although there is not yet a standard approach or method for reporting and/or reviewing Sustainable Performance Targets, borrowers are required to maintain up-to-date information on their progress and to have the progress reviewed by reputable agencies.

Features of SLLs

A feature of the SLL which may be attractive to a borrower is that achieving the agreed Sustainable Performance Targets may result in a reduction of the interest rate margin for the borrower. Rajah & Tann Singapore LLP have advised on SLLs whose structures are such that the interest rate margins are linked to selected Sustainability Performance Targets disclosed in the respective borrowers' annual sustainability reports. The margins on loans drawn from the credit facility may be reduced on a tiered basis if selected Sustainability Performance Targets as well as other conditions are satisfied.

Another structure that can be adopted for an SLL is to increase the interest rate margin or impose stricter covenants on the borrower (e.g. stricter financial covenant ratios) if the borrower fails to meet an agreed Sustainability Performance Target or if the ESG metrics of the borrower perform worse than the original level.

Where the SLL's structure requires an increase in the margin, the lenders could require the proceeds from the increment to be applied towards the borrower's efforts in achieving the Sustainable Performance Targets or utilised towards its other ESG purposes, or the borrower to place certain sums in a secured account which can only be withdrawn if Sustainable Performance Targets are met.

The parties of each deal may agree on, a case by case basis, the appropriate consequences for a borrower's failure to meet a Sustainable Performance Target, but it should be noted that the failure to do so is rarely treated as an event of

[11] *Ibid.*

default. It is also to be noted that there is a possibility for Sustainable Performance Targets to be varied during the term of the loan to reflect the borrower's business activities, such as acquisitions or disposals of assets or entry into new industries or businesses.

Another feature of an SLL is that a borrower will also very likely be required to adhere to more complex and detailed reporting and compliance requirements in respect of the Sustainable Performance Targets throughout the term of the loan, which could entail the borrower having to engage external consultants to review, verify or certify the borrower's progress in achieving the Sustainable Performance Targets. This translates into increased cost to the borrower which could, in some instances, be substantial. However, regulators are now increasingly taking active steps to encourage the adoption of Sustainable Financing and have, for example, started providing grants or incentives to offset the cost for borrowers to engage external ESG consultants or second opinion providers.

Green Loan or SLL?

When considering the type of Sustainable Financing to use, market participants may factor in the following:

(a) **The purpose of the loan and the intentions of the borrower**: A green loan is more suitable if the proceeds are to be used in whole or in part for green projects while an SLL can be used for more purposes which do not need to be related to green projects and is typically recommended if the loan is intended to finance the borrower's ESG strategy as a whole.

(b) **Whether the borrowing entities have any clear sustainability objectives and whether it is sensible to apply the objectives towards formulating ambitious but achievable targets in the SLL**: Borrowers must ensure that the delineation of the Sustainable Performance Targets in the SLL, be it in respect of the targets or related undertakings, is precise, unambiguous and not general. The consequences for breaching the Sustainable Performance Target requirements should be clearly set out. Further, borrowers who are not able to monitor compliance with their Sustainable Performance Targets internally would have to incur additional costs for hiring external parties to do so.

(c) **Type of reporting standards**: Although there are currently no standardised reporting frameworks, regulators and various organisations and bodies are starting to formulate their own standards. Borrowers should bear in mind that any changes in the regulatory landscape, particularly during the tenure of an SLL, could potentially impact the ability of the borrowers to achieve the Sustainable Performance Targets. As a matter of practicality and certainty, it may therefore be sensible to use recognised global or regional frameworks.

(d) **Impact of syndication/sell-down of loans**: Lenders should give thought as to how the Sustainable Performance Targets and Sustainable Performance Target-related covenants in an SLL could impact their ability to syndicate or sell down the loan.

GREEN BONDS AND SUSTAINABILITY-LINKED BONDS

Similar to green loans and SLLs, there are no standardised definitions for green bonds and SLBs. So far, the market guides on these types of bonds tend to fall within the frameworks of the Green Bond Principles and the Sustainability-Linked Bond Principles issued by the International Capital Market Association ("**ICMA**").[12]

[12] ICMA "Green Bond Principles: Voluntary Process Guidelines for Issuing Green Bonds" (June 2018); ICMA "Sustainability-Linked Bond Principles: Voluntary Process Guidelines" (June 2020).

Green Bonds

The Green Bond Principles are similarly to the Green Loan Principles in many ways. One of the similarities is the application of proceeds, in part or in full, to finance Green Projects. Likewise, the features of a green bond must also be aligned with the four core components of the Green Bond Principles. These four core components are similar in nature to those of the Green Loan Principles but contain adapted provisions specific to a financial instrument:[13]

(a) **Use of proceeds**: The Green Project[14] should be appropriately described in legal documentation in line with the requirement of transparency advocated by the Green Bond Principles. Issuers are advised to disclose the proportion of proceeds to be utilised for financing versus re-financing, if any.

(b) **Process for project evaluation and selection**: Issuers are encouraged to adhere to a high level of transparency, with clear communication to investors of their environmental sustainability objectives, the issuers' decision-making process in identifying a Green Project as well as any strategy, policy or processes relating to environmental sustainability. It is also recommended that the process for project evaluation be supplemented with an external review.

(c) **Management of proceeds**: There should be a formal internal process to manage the net proceeds of the green bonds, and the proceeds should be tracked by the issuer or credited to a sub-account or moved to a sub-portfolio in a way that encourages transparency. The balance of the tracked net proceeds should also be periodically adjusted to match allocations to the Green Project.

(d) **Reporting**: Information on the use and allocation of proceeds should be frequently updated and reported annually. The information should be presented in generic terms, and include a brief description of projects and their expected impact. Qualitative and quantitative performance measures should be used to frame the expected impact, with any methodology for calculation disclosed.

Sustainability-Linked Bonds

A SLB is a forward-looking performance-based instrument with the issuers providing an undertaking to meet the specified Sustainable Performance Targets within a specified timeline. The financial and/or structural characteristics of the bond instrument can vary depending on whether the issuer meets its Sustainable Performance Targets. The Sustainability-Linked Bond Principles have five core components:[15]

(a) **Selection of KPIs**: The issuer's sustainability performance is measured using either internal or external KPIs. There is hence a need for the KPIs to be material to the issuer's core sustainability and business strategy and address relevant environmental, social and/or governance challenges of the industry. Among other things, the KPIs should be measurable on a consistent methodological basis, externally verifiable and able to be benchmarked.

(b) **Calibration of Sustainable Performance Targets**: The Sustainable Performance Targets are calibrated to the KPIs and should be realistically aligned with the issuer's ambition to commit to them. The benchmarking approaches for the target setting exercise can include measuring the issuer's own performance and tracking record over time, comparing the issuer against its peers' performance or current industry sectors, or by reference to science-based scenarios or official international targets.

[13] ICMA "Green Bond Principles: Voluntary Process Guidelines for Issuing Green Bonds".
[14] Please see the ICMA "Green Bond Principles: Voluntary Process Guidelines for Issuing Green Bonds" for the non-exhaustive list of eligible Green Project categories.
[15] ICMA "Sustainability-Linked Bond Principles Voluntary Process Guidelines".

(c) **Bond characteristics**: Variation to the bond's characteristics should be commensurate with, and meaningful to the original bond financial characteristics. Issuers should also be prepared to explain why Sustainable Performance Targets cannot be met and take into consideration potential exceptional events which could substantially impact the performance or calculation of the KPIs, by including provisions in the bond documentation to mitigate the effects.

(d) **Reporting**: It is recommended that information on the performance of KPIs, a verification assurance report regarding performance against the Sustainable Performance Targets as well as any information to allow investors to monitor the Sustainable Performance Targets be published at least annually.

(e) **Verification**: Independent and external verification should be sought at least once a year to assess the performance level against each Sustainable Performance Target for each KPI, and the outcome of the review should be made publicly available.

SOCIAL LOAN PRINCIPLES

The social loan market aims to facilitate and support economic activity which mitigates social issues and challenges, and/or achieves positive social outcomes. In April 2021, the APMLA, LMA and LSTA issued the Social Loan Principles ("**SLP**"). The SLP was developed with a view to promoting the development and integrity of the emerging social loan product.

The SLP build on and refer to the Social Bond Principles administered by ICMA with a view to promoting consistency across financial markets.

Social loans must be aligned with the following core components of the SLP:

(a) **Use of Proceeds**: Utilisation of social loans for social projects which provide clear benefits of a social nature.

(b) **Process for Project Evaluation and Selection**: Social objectives and related eligibility criteria should be clearly communicated to the lenders.

(c) **Management of Proceeds**: The proceeds of a social loan should be credited to a dedicated account or otherwise tracked by the borrower in an appropriate manner.

(d) **Reporting**: Borrowers should make and keep readily available up to date information on the use of proceeds, and such information should be renewed annually.

Where appropriate, an external review is recommended. Alternatively, given that the loan market is traditionally a relationship driven market, and therefore lenders are likely to have a broad working knowledge of the borrower and its activities, self-certification by certain qualified borrower may be sufficient.

This publication is up to date as of 31 May 2021[16]

[16] *Except the Phillipines chapter that is updated as of 30 June 2021.*

CAMBODIA

OVERVIEW

As with some developing nations in the region, Cambodia, which has undergone rapid economic growth in recent years, is confronted with the challenges to sustain its economic growth while meeting the environmental, social and governance (ESG) targets expected of the government from the international community.

Cambodia has embraced the Sustainable Development Goals ("**SDGs**") that are promulgated in the United Nations 2030 Sustainable Development Agenda.[17] In 2019, Cambodia launched a two-year project that aims to provide innovative solutions to address three sets of environmental challenges. They are: (i) degradation of natural resources; (ii) growing volume of waste; and (iii) access to affordable and clean energy.[18] The project would support Cambodia sustain its economic growth in a manner that integrates the SDGs.

Funding and financing are crucial to help Cambodia and its enterprises adopt and transition into sustainable practices without compromising on their economic and financial performance that is equally important in developing the country.

FRAMEWORK

The Cambodian Sustainable Finance Initiative was launched in September 2016 to support the Association of Banks in Cambodia ("**ABC**") in its development of finance sector safeguards and risk management standards related to social and environmental impact.[19] The initiative was supported by the National Bank of Cambodia ("**NBC**"), the Ministry of Environment as key government partners and other international partners who provided technical assistance.[20]

In August 2019, ABC signed a memorandum of understanding on "Cooperation of Sustainable Finance" with the Ministry of Environment, NBC and USAID (United States Agency for International

[17] United Nations webpage on "Our Work on the Sustainable Development Goals in Cambodia".
[18] United Nations press release "Pursuing Cambodia's Green and Sustainable Future" (10 March 2019).
[19] ABC is recognised by the Royal Government of Cambodia as the official organisation to represent the country's private banking sector. Its members include local and foreign-owned banks and branches. Its role is to promote the development of the Cambodian financial system and to protect the legitimate interests of its members.
[20] ASEAN Bankers Association articles "The Cambodian Sustainable Finance Initiative" (September 2016).

Development) to further strengthen and develop sustainable financial cooperation in the Cambodian financial sector. This initiative focuses on providing financial support to entities committed to protecting the environment, natural resources, and limiting or preventing factors contributing to climate change in Cambodia.

ABC has issued to its member banks an implementation guideline, known as "Cambodian Sustainable Finance Principles, Implementation Guidelines" ("**Implementation Guidelines**"), which was last revised in February 2019.[21]

The purpose of the Implementation Guidelines is to serve as a basis for the Cambodian banks and microfinance institutions ("**MFIs**") in developing their own sustainable finance approaches in line with the Cambodian Sustainable Finance Principles set out therein.

Under the Implementation Guidelines, "sustainable finance" is defined as "the provision of financial products and services integrating environmental, social and governance criteria into the business or investment decisions, aiming for long-term economic development that is not only economically viable, but also environmentally responsible and socially relevant".

According to ABC, so far 47 member banks and financial institutions in Cambodia have adopted the Implementation Guidelines into their business operations. It is noted that the method of adoption and actual implementation of the general principles set out in the Implementation Guidelines is currently left with the member banks for their own adaptation considering their internal product and service features.

At the Government's policy level, the concept of "sustainable finance" is aligned with and considered as a key part of the Government's development strategic framework identified as the National Rectangular Strategy and its key supporting plan, the Cambodian National Strategic Development Plan.

Actual implementation of the Implementation Guidelines in the market remains at an early stage. While there has yet to be any formal regulation in place on sustainable finance in Cambodia, NBC, as key regulator of the banking and financial industry in Cambodia, together with the Ministry of Environment, have shown continuous support and endorsement towards sustainable finance practices.

[21] Green Finance Platform, "Cambodian Sustainable Finance Principles Implementation guidelines" issued by ABC (Revised, 1 February 2019).

INDONESIA

OVERVIEW

Indonesia is the biggest economy in Southeast Asia and is strongly promoting and establishing sustainable financing in its financial sector. As one of the signatories to the Paris Agreement,[22] Indonesia has pledged to achieve a 29% reduction in greenhouse gas emission by 2030. This percentage may be increased to 41% if there is international support.

As far back as 2005, long before ratifying the Paris Agreement in 2016, the Indonesian government had already established the sustainable development framework in the National Medium and Long-Term Development Plan (2005-2025) ("**NMLT Plan**").

The NMLT Plan details four aspects, namely, social, economy, environment and institutional, in sustainable development. One of the priorities of the NMLT Plan is the shift to low carbon and climate resilient development path. As evidence of its commitment, the government issued (i) the Presidential Regulation No. 61 of 2011 on the National Action Plan to Reduce Greenhouse Gas Emission; and (ii) the Presidential Regulation No. 71 of 2011 on Implementation of National Greenhouse Gas Inventory. The latter aims to establish a greenhouse gas ("**GHG**") inventory administration guideline and to create a system that provides regular information on the level, status, and trend of GHG emission change and absorption. The government has also prepared another national strategic plan, known as National Action Plan for Climate Change Adaptation ("**RAN-API**") that identifies priority climate change adaptation programs and provides a policy mechanism to ensure the achievement of climate change adaptation targets in a sustainable manner.

To promote sustainable financing, the Indonesian Financial Services Authority (or known as "**OJK**") launched the Sustainable Finance Roadmap (2015-2019) ("**Roadmap**") in 2014. The Roadmap sets out the medium-term work plan and goals on sustainable finance program for the financial services industry, which falls under OJK's authority.

Institutions covered by the Roadmap are those in the banking, capital market, and non-bank financial service

[22] The Paris Agreement is a legally binding international treaty on climate change which entered into force in November 2016 pursuant to the United Nations Framework Convention on Climate Change.

sectors. Under the Roadmap, institutions are encouraged to undertake sustainable development programs to balance the economic and environmental sustainability interests through sustainable finance program. Both the domestic and global financial industry responded well to this sustainable initiative. The Roadmap also achieved several milestones such as inception of sustainable finance principles and identification of numerous sustainable business criteria. Most importantly, the Roadmap served as a foundation for OJK to issue a series of sustainable finance policies to support investment opportunities in clean development.

OJK also issued the Sustainable Finance Roadmap Phase II (2020-2024). The Roadmap Phase II focuses on the creation of a comprehensive sustainable finance ecosystem that integrates environmental, social, and governance ("**ESG**") aspects. It also promotes cooperation of stakeholders at various levels.

FRAMEWORK

With the NMLT Plan laying the foundation of sustainable development in Indonesia and the establishment of green index on the Indonesian Stock Exchange, the more recent regulatory framework implemented by OJK pursuant to the Roadmap aims to promote sustainable financing. Through OJK, the government aspires to provide continuous support to financial service institutions and the capital market sector to foster the support of sustainable development. These initiatives are discussed briefly below.

(a) ***ESG Index***

In 2009, the Indonesian Stock Exchange together with the KEHATI Foundation launched a green index called the Sustainable and Responsible Investment-KEHATI Stock Index ("**SRI-KEHATI Index**"). Companies that are included in the Index are selected with reference to the Sustainable Responsible Investment (SRI), as well as ESG principles.[23] The SRI-KEHATI Index is the only reference for Indonesian equity capital market that emphasises ESG principles. At present, the SRI-KEHATI index consists of shares of 25 public companies listed on the Indonesian Stock Exchange. To strengthen its commitment, in December 2020, the Indonesia Stock Exchange launched the new IDX ESG Leaders Index. The Index listed 30 companies with favourable ESG ratings, no significant ESG controversies, top stock price performance, strong financial results, and high trading liquidity.

(b) ***Sustainable Finance Roadmap***

(i) Action Plan for Financial Services Institutions, Issuers and Publicly Listed Companies

Following the announcement of the Sustainable Finance Roadmap (2015-2019) in 2014, OJK issued OJK Regulation No. 51/POJK.03/2017 on Application of Sustainable Finance for Financial Services Institutions, Issuers and Publicly Listed Companies ("**POJK 51**"). Under POJK 51, financial services institutions, issuers, and public companies are required to prepare a sustainable finance action plan and implement such action plan to achieve sustainable economic development.

POJK 51 covers sustainable finance principles, key components of the sustainable finance action plan implementation, and timeline for the implementation of sustainable finance action plan for various categories of financial services institutions. POJK 51 also requires financial services institutions, issuers, and public companies, subject to different implementation periods depending on the sectors and qualifications, to prepare and submit a sustainability report to OJK. The sustainability report should contain information on the entities' economic, financial, social, and environmental performance in carrying out their sustainable businesses. Following submission to OJK, the sustainability report will be publicly available.

Pursuant to the implementation period set by OJK, commercial banks are the first priority target to implement the sustainable finance action plan. The expectation is that commercial banks, as one of the highly regulated sectors, can improve their current benchmark and adopt the global standards and initiatives in relation to sustainable finance. In that regard, more comprehensive regulations may still be required in order to facilitate and optimise the role of the financial services industry in integrating sustainable ecosystem into their practices.

[23] Kehati website at https://www.kehati.or.id/en/index-sri-kehati-2.

(ii) Criteria for Green Bonds Issuance

In December 2017, OJK issued OJK Regulation No. 60/POJK.04/2017 on the Issuance and Terms of Green Bond ("**POJK 60**"), which sets standards for green bond issuance in Indonesia. Green bonds issued pursuant to POJK 60 must satisfy four characteristics.

First, at least 70% of the proceeds from the green bond issuance must be used to finance green projects. POJK 60 lists 11 eligible green projects including renewable energy, energy efficiency, pollution prevention and control, sustainable water and wastewater management, and construction of environmentally sound buildings that meet a national, regional, or international standard.

Secondly, the issuer of the green bond must obtain an opinion or assessment from an environmental expert, stating that the business activity and/or other activities underlying the issuance of the green bond are beneficial for the environment. In relation to this, the prospectus for the green bond must disclose at least: (i) a description of the type of business activity to be financed by the proceeds from the issuance of the green bond and the environmental sustainability objectives that the issuer wishes to achieve; (ii) the processes and methods applied to identify and manage social and environmental risks that may materialise and that are relevant to the business activity; and (iii) evidence of the environmental expert's competence in giving the opinion or assessment.

Thirdly, the issuer must manage the proceeds from the green bond in a separate account or mark it with specific notes in the financial statements. The issuer must also submit reports on the use of proceeds.

Fourthly, the issuer must submit the result of the environmental review report on an annual basis to OJK, as well as disclose any material change in its activity. If the report states that the activity and/or the underlying project no longer qualifies as a green project, the issuer must prepare a remedial plan, which must be executed within one year. If the remedial plan still does not satisfy the eligibility criteria set out in POJK 60, the bond holders may demand the issuer to buy back the bond or increase the coupon.

TRENDS AND OUR INVOLVEMENT

In the past ten years, we have seen vast growth on green bonds issuance both globally and domestically in Indonesia. The Indonesian government, through the Ministry of Finance, plays an active role in the green bonds market. In February 2018, Indonesia made history as the first country to issue sovereign green Islamic bond (*sukuk*) in the amount of US$1.25 billion. The issuance is guided by the Green Bond and Green Sukuk Framework developed by the Ministry of Finance and reviewed by the Center for International Climate Research ("**CICERO**"), an independent reviewer of green bond investment framework. CICERO awarded the bond a medium green shade. The proceeds from the green sukuk will be used exclusively to fund selected eligible green projects, including sustainable transport, waste to energy and waste management, and sustainable agriculture. The issuance of the world's first sovereign sukuk attracted investors from around the globe (32% Islamic market, 25% Asia, 15% EU, 18% USA and 10% Indonesia).[24] This success was followed by the issuance of the second green sovereign sukuk in February 2019, for a total amount of US$2 billion. As per the 2020 Green Sukuk Report issued by the Ministry of Finance, the nett proceeds of the green sukuk have been allocated to fifteen green projects in five different sectors.

Assegaf Hamzah & Partners acted as the counsel to the Ministry of Finance with respect to the issuance of the green sukuk in 2018 and 2019.

Also in 2018, PT Sarana Multi Infrastruktur (Persero) ("**PT SMI**"), a state-owned enterprise (SOE) under the Ministry of Finance established as an infrastructure financing company, kickstarted the domestic green bond market by issuing the first corporate green bond in Indonesia under the regime POJK 60. The total aggregate size was IDR 3 trillion, with first issuance at IDR 500 billion. The proceeds will be used to finance PT SMI's green projects, which include renewable energy, energy efficiency, sustainable pollution management and prevention, sustainable natural resources and land use management, clean transportation, and sustainable water and sewage management. All proceeds from the first issuance of the green bond have been allocated to finance two mini hydro projects and Light Rapid Transit project. The

[24] Ministry of Finance of the Republic of Indonesia, "Indonesia's Green Bond & Green Sukuk Initiative" (2018).

green bond was issued based on PT SMI's green bond framework, developed with assistance from the World Bank and aligned with the International Capital Market Association (ICMA) 2017 Green Bond Principles, as well as ASEAN Green Bond Standards.

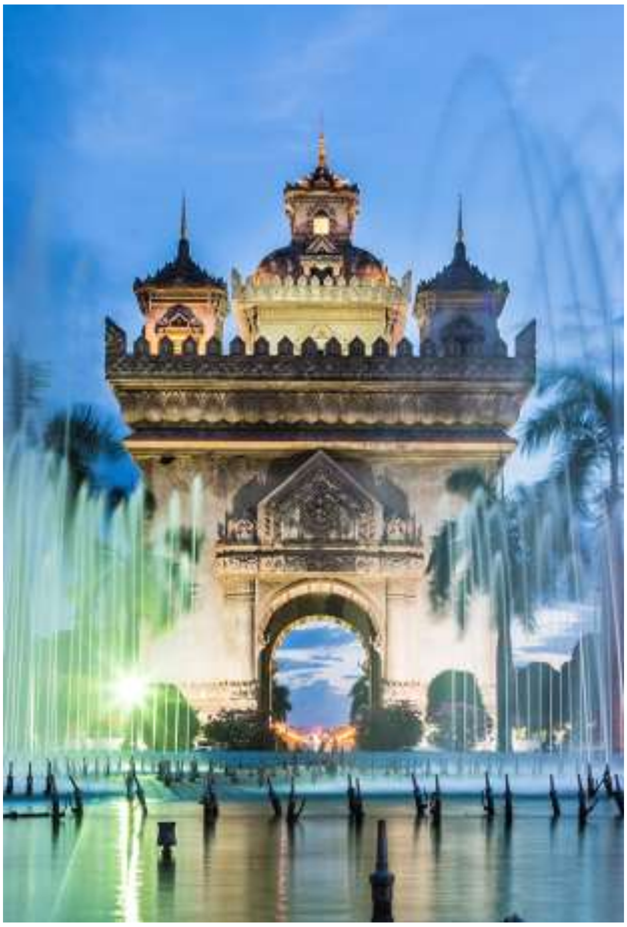
In recent years, we have also seen Indonesian businesses issuing global green bonds to finance the development of their green projects in Indonesia. Assegaf Hamzah & Partners acted as the Indonesian counsel to the following issuers in significant green bond issuances which contribute to the growth of green financing:

- In 2018, PT Royal Lestari Utama, through TLFF I Pte Ltd., issued a global green bond in the amount of US$95 million for the development of natural rubber plantations in Jambi, Sumatra and East Kalimantan provinces. This transaction is Indonesia's first sustainable green bond.

- Star Energy Geothermal Group, the biggest geothermal operator in Indonesia, also raised US$ 580 million in 2018 and US$1.11 billion in 2020 from the issuance of global green bonds. The bonds issued in 2020 was the first investment grade green project bond from the private sector in Indonesia. The green bond issuance by Star Energy Group in 2020 received the "Megatrend Deal of The Year – ESG" and "Best of South East Asia Deals of The Year" at the *FinanceAsia* Achievement Awards for 2020.

- PT Japfa Comfeed Indonesia Tbk in the issuance of US$350 million sustainability linked bonds listed on the Singapore Exchange, together with Rajah & Tann Asia Singapore legal team at Rajah & Tann Singapore LLP. PT Japfa Comfeed Indonesia Tbk is the largest agrifood company in Indonesia.

LAO PDR



OVERVIEW

The dual goal of facilitating growth in the economy and protecting its climate has guided the country's policymaking. Although Lao PDR had achieved an average annual growth rate of 8% from 2000 to 2017, it was estimated that in the long term, this would not be sustainable as the environment would be corrpromised and its natural resources would be depleted and exploited for such gains.[25]

For example, climate change is an increasing concern in Lao PDR as forest cover has declined from 70% in 1940 to around 40% of the country in 2010.[26] Some estimates suggest that environmental threats would aggravate losses resulting from natural disasters and related causes to an extent that it would hamper the growth of the economy.[27] As a result, there is greater impetus from the country's government to implement green and sustainable growth.

To this end, Lao PDR has expressed a strong commitment to the Sustainable Development Goals ("**SDGs**") that are promulgated in the United Nations 2030 Sustainable Development Agenda. On 20 September 2017, the President of Lao PDR issued a Decree on appointing the Prime Minister to chair the National Steering Committee for SDG implementation.[28]

In this regard, earlier in 2016, Lao PDR had adopted the 8th Five-Year National Socioeconomic Development Plan ("**NSEDP**") (2016 – 2020), which outlined the following initiatives that laid the foundation for SDG implementation.[29]

(a) Legislation

Conservation of the natural resources and environment sector has seen improvement due to the implementation of legislation and regulations, which include:[30]

- Law on Land;
- Law on Forest;

[25] World Bank Report No. 108168 "Laos – First Programmatic Green Growth Development Policy Operation Project" (3 May 2017) at page 1.
[26] *Ibid*, at [1].
[27] *Ibid*.

[28] United Nations Report, "Lao People's Democratic Republic Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development" (July 2018) at page vi.
[29] United Nations Publication, "8th National Socio-Economic Plan (2016-2020)" (Officially approved at the VIIIth National Assembly's Inaugural Session, 20-23 April 2016, Vientiane).
[30] NSEDP (2016-2020) at [3.4.3].

- Law on Water and Water Resources;
- Law on Environment Protection;
- Improvement of the Decree on Social-Environmental Impact Assessment; and
- Decree on Compensation and Relocation of Population.

In 2019, the Law on Land and the Law of Forestry were revised to prevent commercial exploitation of natural forest areas. Degraded areas would be allowed to be converted to plantations that are sustainable and capable of creating livelihood opportunities.[31] Due to the legislation and regulations, there are appropriate restrictions and balance on the use of Lao PDR's natural resources in the pursuit of economic goals. There are also prescriptive measures on management, preservation, development, utilisation and reporting requirements on the use of such natural resources.

(b) Commitment to Renewable Energy

As Lao PDR is presently a natural resource-based and extractive industries-dependent economy, there are plans to manage the mining industry's production (which contributes significantly to Lao PDR's export) at a sustainable rate.[32]

At the same time, there is also an increasing focus on hydropower development, thermal electric power, solar energy and industrial plants energy to turn the energy sector into a sustainable income-generating sector.[33]

(c) Sustainable Agricultural Practices

Lao PDR has a multi-faceted approach to achieve sustainable agricultural targets through the promotion of clean and organic agriculture.

There is a plan for proper allocation of land towards agricultural purposes by classifying and identifying land use areas for rice farming, cash crops plantation, large animal husbandry, poultry and aquatic animals, and target areas for tree plantation.[34]

Additionally, Lao PDR has planned for the development of basic infrastructure such as improving existing irrigation systems and identifying additional target areas for irrigation.[35]

(d) Policy Making

Lao PDR has established the Green Growth National Steering Committee ("**GGNSC**") to guide green planning, deal with teething issues with implementation and oversee monitoring and reporting standards.[36]

GGNSC is also responsible for ensuring that subsequent NSEDPs and longer-term plans are guided by the experiences derived from past and present NSEDPs.[37]

In December 2018, the National Green Growth Strategy for 2030 was developed with the aim of strengthening "the balance between economic expansion, environmental protection and social development to ensure the maintenance of high, stable, sustained and durable economic growth".[38]

FRAMEWORK

As at the date of publication of this Guide, Lao PDR does not have any legislation setting out the requirements of green loans or sustainability linked loans.

However, the government of Lao PDR focuses on obtaining funding from multilateral agencies for the development of a sustainable and green financing ecosystem.

The country participates in a series of three single-tranche programmatic Development Policy Financing ("**DPF**", and the series of DPF, the ("**DPF Series**")) supported by the World Bank and the International Development Association ("**IDA**"), of which two have already been announced.

(a) First DPF

The first DPF is named the *First Programmatic Green Growth Development Policy Operation*, and its objective is to help the country "*achiev[e] fiscal stability*

[31] United Nations Publication, "Lao PDR-United Nations Partnership Framework for Sustainable Development (2017-2021): 2019 Progress Report" (2020) at page 8.
[32] NSEDP (2016-2020) at [6.4.1.1].
[33] NSEDP (2016-2020) at [6.4.1.1].
[34] NSEDP (2016-2020) at page 128.
[35] NSEDP (2016-2020) at page 128.
[36] *Supra* note 28.
[37] *Supra* note 28.
[38] "National Green Growth Strategy of the Lao PDR till 2030" (December 2018) issued by the Secretariat for Formulation of National Green Growth Strategy of the Lao PDR.

and mov[e] toward green growth."[39] To achieve this objective, IDA credit of up to US$38.6 million has been loaned to Lao PDR. This DPF supports the initiatives identified in the NSEDP. There are three pillars to the first DPF.[40]

The first pillar is to support economic policies aimed at addressing key macroeconomic risks.

The second pillar is to consolidate green growth principles across the national strategy including the financial sector. For this pillar, the key performance indicators include: (i) administering environmental assessments; (ii) providing complete disclosure in investment projects in the mining, energy and transport sectors; and (iii) verifying climate resilience projects with technical audits.

The third pillar is to implement targeted actions to reduce the environmental impacts of hydropower, logging, and agriculture, as well as to ensure that growth generated from these sectors is sustainable in the long term. Such actions include: (i) improving river basins; (ii) increasing hectares of production forest areas; and (iii) building more national parks.

(b) ***Second DPF***

The second DPF is named the *Second Programmatic Green Growth Development Policy Operation*, and the objective is to "*achieve fiscal sustainability and financial sector stability, adopt green growth planning and monitoring, and introduce green growth tools and principles in priority sectors*".[41] To achieve this objective, IDA credit of up to US$40 million was provided to Lao PDR.

For the second DPF, the focus is on strengthening infrastructure resilience to climate risks, managing pollution and improving the protection afforded to water resources, forests and other protected area.[42] This DPF is also aligned with the green growth vision as articulated in the NSEDP and the National Green Growth Strategy for 2030.

INCENTIVES AND SCHEMES

The sustainable finance market is at a very early stage in Lao PDR. However, there is much potential in this market.

(a) ***Bonds***

As at the date of publication of this Guide, no specific policy or measure has been introduced by the government of Lao PDR to support sustainability linked and green bonds.

However, Lao PDR has a bond market which currently has 15 listed bonds issued by the government. As of October 2019, the outstanding amount of bonds was about LAK 1,051.2 billion (approximately US$118.8 million).[43]

Lao PDR has also tapped on the capital markets of its neighbours such as Thailand, as they have more developed bond markets which could support domestic green issuances.

For example, the government of Lao PDR has issued bonds in the Thai market to raise capital to finance electricity generation projects.[44] In addition, EDL-Generation Public Company, a BBB TRIS rated state-owned company with leading power generation business, has issued several tranches of bonds in Thailand since 2014 and recently in 2018.[45]

(b) ***Loans***

As at the date of publication of this Guide, no specific policy or measure has been introduced by the government of the Lao PDR to support sustainability linked and green loans.

[39] Document of the World Bank, Report No. 108168-LA, "Program Document for a Proposed Credit in the Amount of SDR28.5 Million to the Lao People's Democratic Republic for the First Programmatic Green Growth Development Policy Operation" (3 May 2017).
[40] *Ibid* at pages v and vi.
[41] World Bank press release "Lao Programmatic Green Growth Development Policy Operation" (28 May 2019); Document of the World Bank, Report No. 136312-LA, "Program Document for a Proposed Credit in the Amount of SDR28.9 Million to the Lao People's Democratic Republic for the Second Programmatic Green Growth Development Policy Operation" (30 April 2019).
[42] World Bank press release "Lao PDR's Green Growth Reforms Get $40 million Boost with Credit from World Bank" (28 May 2019).
[43] UN Global Compact Network Singapore Report, "Closing the SDG Financing Gap in ASEAN: A Sustainable Finance Guide for Corporates" (2020).
[44] International Financial Review article "Laos markets US$350m 5yr to tackle refinancing needs" (26 January 2021).
[45] The Nation Thailand article "Lao power operator to issue Thai bonds" (29 May 2018).

However, Lao PDR has collaborated with International Finance Corporation ("**IFC**"), a member of the World Bank Group, and the Bank of the Lao PDR to convene workshops to introduce the concepts of green credit policy. In one of these sessions, IFC shared how other emerging markets approach sustainable financing. Drawing lessons from these experiences would help contribute to Lao PDR's National Green Growth Strategy, and gradually integrate green credit policies and guidelines into the banking system.[46]

FUTURE INITIATIVES

9th NSEDP (2021 – 2025)

Due to the impact of the COVID-19 pandemic on Lao PDR and the ripples felt regionally, the 9th NSEDP (2021 – 2025) focuses on making sure Lao PDR comes out of the pandemic even stronger than before.

In December 2020, a high-level consultation was jointly organised by Lao PDR's Ministry of Planning and Investment together with the United Nations for development partners to consult with the government of Lao PDR on policy priorities in relation to the 9th NSEDP (2021 – 2025).[47] More details and an official version of the 9th NSEDP (2021 – 2025) will be finalised and announced in due course.

[46] IFC press release "IFC AND Bank of Lao PDR Join to Discuss the Benefits of Green Credit Policy" (5 June 2018).

[47] United Nations press release "Lao PDR's Development Policy Priorities for the Next 5 Years: High-Level Consultation on the 9th NSEDP under the Roundtable Process" (11 December 2020).

MALAYSIA

OVERVIEW

Malaysian regulators have recognised that the financial sectors must give more serious considerations to environmental, social and governance ("**ESG**") issues to combat climate change, as the materialisation of climate-related risks may have a negative impact on financial intermediation activities which will in turn amplify its disruptive effects to the economy.[48]

With that in mind, regulators and government agencies such as Bank Negara Malaysia ("**BNM**"), the Securities Commission Malaysia ("**SC**"), Bursa Malaysia and the Malaysian Green Technology Corporation ("**MGTC**") participated in national and regional working groups and task forces on sustainable finance to address such issues. At the national level, BNM, SC and Bursa Malaysia have come together to form the Joint Committee on Climate Change, as an effort by the regulators and financial institutions in Malaysia to cooperate and address climate change issues together. Malaysia is already a signatory to the Paris Agreement,[49] and intends to reduce its greenhouse gas emissions by 45% by 2030 relative to its emissions in 2005.[50] In addition to that, Malaysia is a supporter of the Task Force on Climate-related Financial Disclosures ("**TCFD**") and is part of the ASEAN Capital Markets Forum's Sustainable Finance Working Group, which has developed the ASEAN Standards for Green Bonds, Social Bonds and Sustainability Bonds.[51]

Apart from the regulatory environment, the sustainable finance ecosystem in Malaysia is also driven by local and overseas investors. On the local investors' front, most notably the Malaysian pension fund, the Employees Provident Fund ("**EPF**") has announced that it is imposing an obligation on its panel of brokers to include ESG considerations into their research process,[52] thus, emphasising the importance of ESG concerns in sustainable finance. Malaysia has also realised that it needs to prioritise ESG criteria and to entrench the practice within the local business scene if it wishes to attract foreign investors from developed markets where ESG awareness is high.[53] In particular, one of Malaysia's largest trading partners, China,

48 "Governor's Keynote Address at the Launch of the World Bank Sustainable and Inclusive Finance Forum" – Speech by Datuk Nor Shamsiah Mohd Yunus on 6 October 2020.

49 The Paris Agreement is a legally binding international treaty on climate change which entered into force in November 2016 pursuant to the United Nations Framework Convention on Climate Change.

50 United Nations Framework Convention on Climate Change (UNFCCC) NDC Registry: "Intended Nationally Determined Contribution of the Government of Malaysia" (16 November 2016).

51 Asean Capital Markets Forum (ACMF) webpage "Development of a sustainable asset class in ASEAN".

52 Edge Weekly "Cover Story: ESG becoming mainstream" (17 December 2020).

53 *Ibid*.

announced in September 2020 that it aims to cut its net carbon emissions to zero by 2060. It would not be hard to anticipate that China's commitment in addressing climate change may trickle down to affect Malaysian companies and financial institutions which form a part of its supply chain,[54] and hence ushering in an economy with higher ESG visibility which will in turn increase the demand for sustainable finance.

It seems like there has been an "awakening" for Malaysia's retail investors too. In March 2020, Malaysian banks came under fire for continuing to finance coal-fired plants,[55] as more and more lenders around the world have announced that they will cease lending to such "dirty" industries. Malaysian banks are now considering a "phased" approach to stop lending to such industries and to incorporate ESG considerations in their decision making.[56]

FRAMEWORK

As at the date of publication of this Guide, there are no mandatory requirements imposed by the regulators in respect of green loans or sustainability linked loans ("**SLLs**"). However, Malaysian banks have started to introduce ESG frameworks within their respective groups and to implement their own sustainability policies internally. Some banks have also formed sustainability committees to assess whether a corporate borrower is eligible for a loan based on their new frameworks. These are some of the efforts made by the banks in Malaysia towards developing a sustainable financial ecosystem and promoting the adoption of sustainable business strategies and practices amongst corporate borrowers.

(a) Sustainable and Responsible Investment Sukuk

While the regulators have not formulated many frameworks in respect of green loans and SLLs, the SC has capitalised on Malaysia's position as the leading Sukuk (Islamic bonds) centre in the region, and had in 2014 issued the Sustainable and Responsible Investment ("**SRI**") Sukuk Framework ("**SRI Sukuk Framework**") as a step towards promoting sustainable and responsible investing for investors and issuers alike, whereby proceeds from the issuance of SRI Sukuk would be used to finance transactions relating to eligible SRI projects.[57] The introduction of this framework is intended to fill the gaps in green financing in Malaysia.

Eligible SRI projects are divided into green projects, social projects, projects which have both green and social features and *waqf* projects. Green projects include renewable energy, pollution prevention and control, clean transportation, sustainable water and wastewater management, climate change adaption and green buildings. Social projects include affordable basic infrastructure, access to essential services and food security. These projects must achieve at least one of the following objectives: (i) preserving and protecting the environment and natural resources; (ii) conserving the use of energy; (iii) promoting the use of renewable energy; (iv) reducing greenhouse gas emission; (v) addressing or mitigating a special social issue; or (vi) improving the quality of life of society.[58]

The SRI Sukuk Framework comprises four components which are:

(a) **Utilisation of proceeds**: Proceeds raised from the issuance of the SRI sukuk should only be applied towards funding any activities or transactions relating to the eligible SRI projects;

(b) **Process for project evaluation and selection**: An issuer who issues any SRI Sukuk is required to establish processes for evaluation and selection of the eligible SRI projects for which the proceeds of the SRI Sukuk are to be utilised;

(c) **Management of proceeds**: Proceeds from the issuance which are to be utilised for SRI projects are required to be credited into a designated account or otherwise tracked in an appropriate manner. This is to ensure transparency and boost public confidence that their investment is used for the eligible SRI projects; and

(d) **Reporting**: Issuers should report annually on the amounts allocated for SRI projects, utilised and unutilised amounts and a brief description of the

[54] *Ibid.*
[55] Edge Weekly "Malaysian banks' lending to coal sector under scrutiny" (14 March 2020).
[56] *Ibid.*
[57] SC webpage "Sustainable and Responsible Investment Sukuk Framework An Overview".
[58] *Ibid.*

SRI projects. Further, an issuer needs to formulate and establish policies and processes to comply with the SRI Sukuk Framework. These policies and processes must be made public on the issuer's website throughout the tenure of the SRI Sukuk.

The principles underlying the SRI Sukuk Framework are in line with the Green Bond Principles issued by the International Capital Market Association ("**ICMA**").[59] Issuers may use the Sukuk proceeds under the SRI Sukuk Framework to purchase Shariah (Islamic law) compliant receivables, acquire projects, refinance existing borrowing, and for research and development. These activities must be related to the eligible SRI projects.

Independent external reviewers can be appointed to assess the issuer's chosen SRI projects and the issuer's compliance with the SRI Sukuk Framework. Upon completing the assessment, the external reviewer may provide a compliance report. The issuer may also have its SRI Sukuk rated by third parties with regard to its social or green projects to showcase its social or environmental performance rating in addition to its credit rating. These ratings reflect its social or environmental impact on society.

(b) ASEAN Bond

Sustainable financing is further enhanced in Malaysia with the introduction of various bond standards by the ASEAN Capital Markets Forum ("**ACMF**"). They are the ASEAN Green Bond Standards (launched in November 2017), the ASEAN Social Bond Standards (launched in October 2018) and the ASEAN Sustainability Bond Standards (launched in October 2018) (collectively, the "**ASEAN Bond Standards**"). The ASEAN Bond concept was initiated by ACMF whose membership comprises capital market regulators from all ten ASEAN countries. Briefly, an ASEAN Bond is a type of bond which complies with the relevant ASEAN Bond Standards where the proceeds of issuance will be used to finance or refinance green and/or social projects.

A Malaysian issuer who intends to issue an ASEAN Bond is required to comply with the relevant ASEAN Bond Standards. The ASEAN Bond Standards are also aligned with the ICMA Green Bond Principles, Social Bond Principle[60] and Sustainability Bond Guidelines.[61] The ASEAN Bond Standards aim to provide specific guidance on how the ICMA Green Bond Principles may apply uniformly across ASEAN.

Some green projects share social co-benefits and conversely, some social projects share some green co-benefits. Hence, ACMF subsequently launched the ASEAN Sustainability Bond concept to cater to projects where the green and social benefits intersect with each other. An ASEAN Sustainability Bond issuer must comply with both the ASEAN Green Bond Standards and the ASEAN Social Bond Standards to issue an ASEAN Sustainability Bond. The proceeds will be used to finance or re-finance a combination of green and social projects.

An ASEAN Bond must have geographical or economic connection to the ASEAN region and an ASEAN Bond may be issued by a non-ASEAN issuer as long as the proceeds of the bond are to be applied towards eligible projects which are located in ASEAN. It is to be noted that proceeds issued under an ASEAN Bond cannot be utilised for fossil fuel power generation projects to prevent greenwashing, nor can the proceeds be applied towards projects which involve activities that have negative social impact such as projects related to alcohol, gambling, tobacco and weaponry. Further, an issuer under the ASEAN Bond Standards is encouraged to provide frequent reporting and the data such as the use of proceeds should be verified by an external reviewer to uphold investor confidence and assure transparency on the use of proceeds issued under the ASEAN Bond.

The ASEAN Bond Standards have specific guidelines to establish processes for evaluating and selecting eligible projects. Issuers are encouraged to engage an external reviewer to review the process for evaluating and selecting the eligible projects. Further, an issuer must publish its environmental sustainability or social objectives, the selection process on how it determines a project qualifies as an eligible project and other related eligibility criteria.

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[59] ICMA "Green Bond Principles: Voluntary Process Guidelines for Issuing Green Bonds" (June 2018).

[60] ICMA "Social Bond Principles: Voluntary Process Guidelines for Issuing Social Bonds" (June 2020).

[61] ICMA "Sustainability Bond Guidelines" (June 2018).

The first ASEAN Bond was issued by Malaysia's PNB Merdeka Ventures Sdn Bhd for RM2 billion to finance the construction of the Warisan Merdeka Tower which will be one of the tallest buildings in Malaysia upon completion. In 2019, Christopher & Lee Ong advised CIMB Investment Bank Berhad, Maybank Investment Bank Berhad and HSBC Bank Malaysia/HSBC Amanah Malaysia Berhad on the upsizing of the Cagamas Sukuk/bond from RM40 billion to RM60 billion. The upsizing was partly to issue ASEAN Sustainability Bonds from time to time, which proceeds will be used to purchase eligible Islamic financing for affordable housing and also to purchase eligible loans related to SMEs, renewable energy and sustainable water and water waste management. As at January 2021, there are 13 ASEAN Bond issuances by Malaysian issuers.

(c) *Major Deals*

While news on Sustainable Financing transactions in Malaysia has been noticeably scarce (presumably as such information is generally not made publicly available), banks such as CIMB Bank Berhad ("**CIMB**") and RHB Banking Group ("**RHB**") have committed to expanding their SLL and green financing incentives. CIMB announced that their SLL incentive for corporate borrowers[62] will now include alignment with any of the 17 Sustainable Development Goals ("**SDGs**").[63] As for RHB, it had increased its green financing portfolio to RM3 billion, up to 6.3% from December 2019 in support of green projects and a RM5 billion commitment for green financing by 2023.[64] The Standard Chartered Group in Malaysia has also made clear that sustainable finance is one of the three pillars of its sustainability framework, and it engages with various industry participants once every several years in order to ensure its framework remains fit for purpose. The OCBC Group has also been actively participating in sustainable financing deals in Malaysia, particularly in respect of its financing of solar power plants.

According to Muhammad bin Ibrahim, the Deputy Governor of BNM from 2010 to 2016, Islamic finance has strong potential to contribute towards a sustainable financing ecosystem as Islamic finance seeks to enhance the general welfare of society, thus, requiring environmental protection and sustainability to ensure the fulfilment of the Islamic tenets.[65]

The Malaysian green bond market has seen sustained growth. In 2019, the country had six new issuers of green bonds, i.e. double the number in 2018.[66] As at January 2021, there have been 16 SRI Sukuk issuances in Malaysia, which makes Malaysia the country with the highest number of SRI Sukuk corporate issuances in ASEAN.[67] Malaysia is capitalising on being the world leader in the issuance of Islamic bonds/Sukuk by putting their emphasis on green Sukuk.[68]

It is clear that the Malaysian green Sukuk market has benefitted from the SC's SRI Sukuk Framework. According to Climate Bonds Initiative, an international non-profit organisation for climate change solutions supported by the HSBC Bank, the Malaysian bond market is sufficiently mature to support the development of a local green bond market, with 75% of outstanding green bonds offered in Sukuk format.[69] This is perhaps best shown by the ESG-focussed *Sukuk Prihatin* issued by the Malaysian government in 2020 which was oversubscribed and reached a total subscription of more than RM666 million, surpassing its target issuance size of RM500 million.[70] The Malaysian government also has plans to issue their first sustainability bond which is expected in 2021.[71]

In the private sector, Tadau Energy Sdn. Bhd. ("**Tadau Energy**"), in June 2017, issued the world's first green

Malaysia

[62] CIMB press release "CIMB Allocates RM3 Billion for Sustainability-Linked Loans" (5 January 2020).
[63] The Sustainable Development Goals are a collection of 17 goals set by the United Nations outlining the intention to end poverty, protect the planet and improve the lives and prospects of everyone. Each goal is given specific targets, along with indicators to measure the progress toward each target. All UN Member States have adopted the 17 goals in 2015, and the goals are intended to be achieved by the year 2030. UN webpage "The Sustainable Development Agenda".
[64] The Edge Markets "RHB commits RM5b to support green financing by 2025" (11 November 2020).
[65] "Deputy Governor's Keynote Address at The Green Financing: Discover Green Technology Industry in Malaysia "Role of the Islamic Financial System in Supporting Green Technology"" – Speech by Muhammad bin Ibrahim, FCB on 8 October 2013.
[66] Green Finance Platform "ASEAN Green Finance State of the Market 2019" (April 2020).
[67] Capital Markets Malaysia webpage "SRI Sukuk".
[68] China Global Television Network (CCTN) "Green bonds gain traction in Malaysia" (18 November 2020).
[69] Climate Bonds Initiative "Green Infrastructure Investment Opportunities Malaysia: 2020 Report" (8 March 2021).
[70] TheStar "Sukuk Prihatin oversubscribed, demand hitting RM666mil" (21 September 2020).
[71] Ministry of Finance "Malaysia Budget 2021 Speech" (6 November 2020).

Islamic bond/Sukuk of RM250 million (issued under the SRI Sukuk Framework) to finance the construction of solar photovoltaic power plants with an aggregate capacity of 50MWac in Sabah, Malaysia. Shortly after that, Quantum Solar Park (Semenanjung) Sdn. Bhd. ("**QSPS**"), on 6 October 2017, issued green Islamic bond/Sukuk of RM1 billion (issued under the SRI Sukuk Framework) to finance the construction of solar photovoltaic power plants with an aggregate capacity of 150MWac in Malaysia. Christopher & Lee Ong advised both Tadau Energy and a co-sponsor cum equity investor of QSPS on the respective issuances.

INCENTIVES AND SCHEMES

(a) __Green Technology Financing Scheme__

First introduced by the government of Malaysia during the tabling of the National Budget 2010 speech, the Green Technology Financing Scheme ("**GTFS**") is a financing programme offered to corporate borrowers or investors who are in the business of producing or using green technology, or in the business of developing energy efficient projects and/or energy performance contracting. In short, companies incorporated in Malaysia which are primarily engaged in such businesses may apply for a loan under the GTFS for their working capital needs, which is intended to finance all cost components falling under the "green technology" criteria. In this regard, GTFS loan applicants will need to demonstrate that the business models and technology adopted are able to preserve natural resources and the environment as well as fulfil specific criteria depending on the scope of work that they undertake. For example, applicants who are involved in the manufacturing sector will need to demonstrate that they have deployed green processes in the production lines.

The Malaysian Green Technology and Climate Change Centre (formerly known as GreenTech Malaysia or Green Technology Corporation) ("**MGTC**") is the main implementing agency responsible for assessing and approving the GTFS loan application. The government guarantee and subsidy reimbursements will be issued, administered and verified by the CGC (as defined below). The implementation of the first round of GTFS was in force until 31 December 2017. As part of the government's effort to continuously support the development of green technology projects, the Government announced in April 2017 an extension and certain improvements to the GTFS programme, known as the "GTFS 2.0", which was open for applications from January 2019 to the end of 2020.

The key incentives enjoyed by participants (borrowers) under the GTFS 2.0 were:[72]

(a) a government rebate of 2% per annum interest/ profit rate subsidy for the first seven years of the qualifying loan/financing; and

(b) a government guarantee of the costs of components for green technology amounting to 60% of the approved loan/financing amount, issued by the Credit Guarantee Corporation Malaysia (Malaysia's leading credit guarantee provider in the small and medium-sized enterprises sector) ("**CGC**"), to the relevant lender.

The National Budget 2021 speech announced by the Prime Minister on 1 July 2020 reiterated the government's aspiration to promote Malaysia as a regional hub for sustainable finance. This is echoed in the MGTC's extension of the GTFS scheme,[73] referred to as the new "GTFS 3.0". The Government intends to allocate a fund size of RM2 billion for the GTFS 3.0, and the scheme will open for application for two years up to the end of 2022. It is proposed that the loans granted under GTFS 3.0 will be guaranteed by Danajamin Nasional Berhad, the issuer of Government guarantees. To date, the guidelines in relation to the GTFS 3.0 have yet to be published by MGTC.

(b) __Incentives for Sustainable Debt Capital Markets Issuances__

In 2018, the Green SRI Sukuk Grant Scheme of RM6 million was established by the SC. Each Green SRI Sukuk issuer may apply to the SC for this grant to finance up to 90% of the external review expenses, limited to RM300,000 per issuance. The Green SRI Sukuk Grant Scheme is effective and available for utilisation until the grant has been fully utilised. This scheme is intended to incentivise issuers to participate in green projects and promote green Sukuk issuance in Malaysia. It also aims to reduce the cost of green Sukuk issuances borne by the issuer and to embody Malaysia's commitment to the SDGs. Claims can be

[72] MGTC webpage "Features of GTFS 2.0".

[73] *Supra* note 74.

made based on an issue or programme and if there is more than one issuance per programme requiring separate external review, the issuer will be able to claim the cost of all reviews. In addition, the grant received by the Green SRI Sukuk issuers will be exempted from income tax.

More recently, in January 2021, the SC expanded the scope of the incentive from solely green projects to social, sustainability and other SRI Sukuk issuances made under the SRI Sukuk framework effective from 25 August 2020. The expansion of the grant also includes bond issuances made under the ASEAN Green Bond Standards, ASEAN Social Bond Standards or ASEAN Sustainability Bond Standards effective from 29 October 2020. The grant has been renamed "SRI Sukuk and Bond Grant Scheme".

Pursuant to the National Budget 2021 speech, the existing income tax exemption for Green SRI Sukuk Grant Scheme will also be extended to all the recipients under the SRI Sukuk and Bond Grant Scheme and this exemption for the grant will be given for a period of five years for any applications received from 1 January 2021 to 31 December 2025.[74]

Further, the Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017 read together with the National Budget 2020 speech[75] provide that income tax deduction is granted for the cost incurred by an issuer on the issuance of SRI Sukuk lodged with the SC for the year of assessment 2016 until the year of assessment 2023. 90% of the proceeds must be used solely for the funding of SRI projects in order to qualify for this tax deduction.

The latest initiative announced by the SC is "NaviGate: Capital Market Green Financing Series", a programme which connects micro, small and medium enterprises ("**MSMEs**") and other green and sustainability-focused companies to alternative capital market financing avenues such as Equity Crowdfunding ("**ECF**") and Peer-to-Peer ("**P2P**") financing.[76] Supported by the MGTC and the Sustainable Energy Development Authority ("**SEDA**"), the programme aims to foster capital market inclusivity and accelerate the SRI agenda to drive Malaysia's sustainable development. MSMEs generally have lower capital requirements, which makes ECF and P2P financing platforms practical alternatives to traditional financing. The ECF provides early-stage financing for start-ups and entrepreneurs from a group of investors – these investors will receive equity or shares from the company and will become one of the shareholders of the company.[77] On the other hand, P2P financing facilitates MSMEs to raise working capital or capital for growth from both retail and sophisticated investors through an online platform. Facilitated by P2P operators, an investor may invest in an investment note or an Islamic investment note issued by the businesses for a specified tenure with the expectation of a predetermined financial return.[78] Since the launch of these two digital platforms, the total funds raised by these two digital platforms reached RM1.3 billion as at December 2020 and benefited around 3,000 MSMEs.[79] Further, Budget 2021 allocated RM50 million to P2P and RM30 million to ECF investments, highlighting the Malaysian government's efforts to boost MSME participation in the green economy via FinTech. At its inaugural run, the event attracted a total of 100 participants and 40 MSMEs from the green technology and sustainable energy sectors in Malaysia. It is also noteworthy that, according to Datuk Syed Zaid Albar, Chairman of the SC, 60% of the individual investors in ECF and P2P platforms are under the age of 35.[80] Hence, a positive sign that green financing in Malaysia is not just limited to the bigger and more established corporations and players.

FURTHER INITIATIVES / REFORMS

(a) ***BNM's Framework to Encourage Sustainability Finance and Proposed Reforms – Value-Based Intermediation by Islamic Financial Institutions***

In collaboration with the International Centre for Education in Islamic Finance ("**INCEIF**"), VBI

[74] *Supra* note 74 at [222].
[75] Ministry of Finance "Malaysia Budget Speech 2020" at [64].
[76] SC press release "SC Holds Inaugural Capital Market Green Financing Series - Widening Access To Sustainable Financing For MSMEs" (26 February 2021).
[77] SC webpage "Frequently Asked Questions on the Equity Crowdfunding (ECF) Framework".
[78] SC webpage "Frequently Asked Questions on the Peer-to-Peer Financing (P2P) Framework".
[79] *Supra* note 79.
[80] "Welcoming Remarks At Navigate: Capital Market Green Financing Series" – Speech by Datuk Syed Zaid Albar, Chairman, SC on 26 February 2021.

Community of Practitioners ("**CoP**") and the World Bank Group (Malaysia Office), BNM issued a guidance document in November 2019 to facilitate the adoption of Value-based Intermediation ("**VBI**") by Islamic financial institutions ("**IFIs**") in Malaysia.

VBI encourages IFIs to consider sustainability practices when assessing transactions; in particular, to apply impact-based risk management strategies in their respective technical, operational, and financial segments as well as its financing and investment activities.[81] Similar to the concepts of ESG and ethical finance and sustainable, responsible impact financing, VBI is anchored on Shariah tenets which serve as a reference point to enhance the risk management frameworks of IFIs. For illustration, any financing and investment activities undertaken by an IFI will be assessed pursuant to the principle of "attainment of benefit and prevention of harm" and the decision making process of an IFI in respect of the types and sectors of business that it ventures into should be guided by the value propositions of Shariah. IFIs are strongly encouraged to consider the national sustainable development goals and the international standards that best express the ideas on sustainability (including but not limited to the 2015 Paris Agreement, TCFD and international science-based multi-stakeholder standards) as well as other sources of data as part of its assessment and quantification process when implementing VBI.

To operationalise the broad guidance principles stipulated in the VBI guidance document, BNM formed a working group with the relevant regulatory authorities and organisations, such as, amongst others, CoP, reputable financial institutions, the Energy Commission of Malaysia, the Malaysian Palm Oil Council and the World Wide Fund for Nature to produce step by step sectoral guides to implement VBI. In August 2020, the working group issued the Value-based Intermediation Financing and Investment Impact Assessment Framework ("**VBIAF**") Sectoral Guides on Palm Oil, Renewable Energy and Energy Efficiency which is intended to provide directions to the IFIs to roll out VBIAF for these sectors at a transactional level.[82] The VBIAF Sectoral Guides on Manufacturing, Oil and Gas, Infrastructure and Construction is expected to be issued in 2021.[83]

(b) <u>BNM's Framework to Encourage Sustainability Finance and Proposed Reforms – Climate Change and Principles-based Taxonomy</u>

In December 2019, BNM released a discussion paper in relation to the national green taxonomy (which is at the public consultation stage), known as Climate Change and Principles-based Taxonomy, with a view to actively building awareness amongst financial institutions on climate-related risks that could affect their customers, through the manifestation of various physical risks, transition risks and liability risks from climate change. This taxonomy, once finalised, will act as a guide for financial institutions to support the channelling of funds to realise Malaysia's decarbonisation objectives.

The following are the main proposals for implementation by Malaysian financial institutions:

(a) integrating climate-related risks into their respective risk management strategies and promoting transparency through voluntary disclosure of climate-related risks in line with the recommendations of the TFCD;

(b) implementing a classification system of economic activities (into six categories) which would determine the range or extent of positive effects to climate change, mitigation and adaptation, or negative effects that could harm the broader environment as a result of the business activities undertaken or measures taken (or not taken) to reduce harmful practices. Financial institutions will be able to identify the effects of the economic activities of their customers consistently and systematically based on the national climate change objectives; and

(c) relying and leveraging on third party verification or recognised certifications by local agencies, globally accepted standards, or regulatory authorities to ensure assurance on environmentally sustainable practices carried out by customers.

[81] Bank Negara Malaysia "Implementation Guide for Value-based Intermediation" (3 October 2018).

[82] "Assistant Governor Fraziali Ismail's Keynote at the Financing Climate Action Conference" – speech by Fraziali Ismail on 20 October 2020.
[83] *Ibid.*

According to the keynote speech of the Assistant Governor of BNM at the International Greentech and Eco Products Exhibition and Conference Malaysia (IGEM) 2020, BNM has plans for greater climate-related disclosure by financial institutions based on the recommendations from the TCFD.[84] It remains to be seen if the proposal to set up a carbon emissions disclosure or reporting framework is to be made mandatory or voluntary.

[84] BNM press release "Joint Statement by Bank Negara Malaysia and Securities Commission Malaysia - Accelerating climate action through the financial sector" (15 September 2020).

MYANMAR

OVERVIEW

For developing economies like Myanmar, applying sustainability and green approaches to grow their various industries means that they can potentially circumvent the usual negative environmental impact of nascent economic growth.

The World Wide Fund (WWF) is working with the Ministry Of Natural Resources And Environmental Conservation to develop Myanmar's green economy framework.[85]

Myanmar is committed to the Sustainable Development Goals ("**SDGs**") that are promulgated in the United Nations 2030 Sustainable Development Agenda. In August 2018, the government of Myanmar announced the Myanmar Sustainable Development Plan (MSDP) incorporating the SDGs, which outlines the initiatives set out below.

(a) __Ensuring Clean Environment and Ecosystems__

Myanmar intends to manage its rich biodiversity through sustainable land and marine use and practices. This can help lead to a boost in agricultural productivity, contribute to energy security and sustain growth in an environmentally friendly fashion.[86]

It has been estimated that the total annual value attained from the Myanmar's forest ecosystem services and marine and coastal ecosystem services are US$7.3 billion and US$8.5 billion, respectively.[87]

For example, mangroves are an important part of disaster risk management. As mangroves provide coastal protection from cyclones and storm surges, they serve as significant mitigators of risks and costs attributable to natural disasters. However, these mangroves are facing threat. From 2000 to 2014, an estimated 14,619 hectares of mangroves were lost every year in Myanmar, with an economic loss approaching US$2.4 million per year.[88]

[85] The World Wide Fund Concept Note, "Unveiling a Green Economy in Myanmar" (November 2017).
[86] *Ibid*, at [50].
[87] The World Bank Synthesis Report "Country Environmental Analysis: A Road towards Sustainability, Peace, and Prosperity – Myanmar" (May 2019) at [xi] and [14].
[88] *Ibid*, at [15].

(b) ***Provision of Reliable Energy***

Myanmar intends to diversify its energy source as there is a greater need and demand for reliable energy access across all industries and households. For Myanmar, achieving an appropriate mix of energy sources is imperative and will include renewable energy.[89]

One area of concern is the high proportion of the population in rural parts of the country utilising wood fuel as energy source.[90] The current scale of wood extraction from the forest is concerning, and needs to be regulated, due to the severe impacts of deforestation.

(c) ***Effective Governance of Resource-Based Industries***

Myanmar intends to pursue its economic development in tandem with its conservation efforts. The government has recognised that the country's underdevelopment may be partly attributable to the exploitation and rapid degradation of essential ecosystems.[91] To address these challenges, there is an increased focus on long-term sustainable land management, water bodies and forests.[92]

For example, the overexploitation of fish stocks has led to a severe decline in Myanmar’s marine fish resources, reportedly by as much as 90% since 1980.[93] Therefore, it stands to reason that sources of economic production will decline over time without sustainable and responsible use of the environment.

FRAMEWORK

As at the date of publication of this Guide, there is no enacted legislation prescribing the requirements of green loans or sustainability linked loans ("**SLLs**").

However, in February 2020, the first secured green loan of up to US$44 million was provided to Myanmar's Shwe Taung Group by the Yangon branches of Singapore banks, Oversea-Chinese Banking Corporation, Limited and United Overseas Bank Limited.[94]

In this regard, the green loans and SLLs offered by banks in Singapore are usually based on the Green Loan Principles[95] and the Sustainability Linked Loan Principles[96] which are issued jointly by the Loan Market Association ("**LMA**"), the Asia Pacific Loan Market Association ("**APLMA**") and the Loan Syndications and Trading Associations ("**LSTA**").

Further, there was a uniquely structured SLL issued by FMO, the Dutch entrepreneurial development bank, and Rabobank to Agrocorp, a Singapore headquartered global agricultural supply chain company. The targets set under the SLL was for Agrocorp to work with FMO to set up farmer training programmes in markets such as Myanmar, where Agrocorp has a strong presence.[97] Unlike most SLLs which would reduce interest when a borrower fails to meet the agreed environmental or social benchmarks, the SLL issued to Agrocorp will cease if the agreed targets are not met.[98]

At this juncture, it may be appropriate to also highlight that part of the challenge is that there may be a variety of standards in ASEAN (Myanmar included) for reporting and/or reviewing sustainable performance targets. A lack of convergence in standards may lead to greenwashing of loans and higher costs because banks must carry out their own research to develop a suitable framework for the region. Standardising the metrics used to measure and monitor solutions and implementing independent tracking of impacts of sustainable projects would hopefully hinder greenwashing. In January 2021, the Green Finance Industry Taskforce convened by the Monetary Authority of Singapore issued a proposed taxonomy for

[89] *Ibid*, at [82].
[90] *Ibid,* at [56].
[91] *Ibid,* at [58].
[92] *Ibid,* at [58].
[93] *Ibid,* at [40].
[94] Shwe Taung and OCBC Bank joint press release "OCBC Bank Partners Shwe Taung Group on Myanmar's First Green Loan" (5 February 2020).
[95] APLMA, LMA and LSTA, "Green Loan Principles" (February 2021); APLMA, LMA and LSTA, "Guidance on Green Loan Principles" (February 2021).
[96] APLMA, LMA and LSTA, "Sustainability Linked Loan Principles" (May 2020); APLMA, LMA and LSTA, "Guidance on Sustainability Linked Loan Principles" (May 2020).
[97] Agrocorp, FMO and Rabobank joint press release "Agrocorp receives USD 50M sustainable borrowing base facility from FMO and Rabobank to enhance food supply chains in developing markets" (2 June 2020).
[98] Eco-Business article "An unusual loan that made the sustainable finance world take notice" (15 October 2020) .

Singapore-based financial institutions for public consultation. The proposed taxonomy would, among other things, develop a taxonomy (with a context) which accounts for the socio-economic interests of the region, including ASEAN, and therefore resulting in the increase adoption of the taxonomy in the region.

INCENTIVES AND SCHEMES

The sustainable finance market is at a very early stage in Myanmar. However, there is much potential in this market.

(a) ***Bonds***

As at the date of publication of this Guide, no specific policy or measure has been introduced by the Myanmar government to support sustainability linked bonds or green bonds.

Myanmar has been working on a "Capital Markets Development Roadmap" since 2008 and is making progress towards a sovereign bond market to reduce the borrowing from the Central Bank to fund the fiscal deficit. [99] With the blueprint for its capital markets formalised, the country now needs greater traffic from issuers and investors.

Currently, the government is the only issuer of bonds in the country, and it sets the interest rates.[100] However, the intention is that when a secondary market is developed, the rates would be decided by market forces.[101]

(b) ***Loans***

As at the date of publication of this Guide, no specific policy or measure has been introduced by the Myanmar government to support sustainability linked loans or green loans.

At this nascent stage of development, the Myanmar government has predominantly relied on multilateral agencies (such as Asian Development Bank ("**ADB**")) to finance sustainability linked projects.

For example, in 2015, ADB and the Government of Myanmar signed a US$80 million loan agreement to rehabilitate a major road to support economic development in the agriculturally-rich but underdeveloped region of Ayeyarwaddy Delta.[102]

In an effort to catalyse green finance to SMEs in the food and beverage sector, four leading banks in Myanmar have signed memorandums of understanding with the Saving Banks Foundation for International Cooperation (SBFIC) for the Tha Bar Wa project. These banks are Ayeyarwaddy Farmers Development Bank (A Bank), Co-Operative Bank (CB), Myanma Apex Bank (MAB) and Myanmar Citizens Bank (MCB).[103] Tha Bar Wa project supports banks to build internal capacity in the field of green financing and assists them in designing and selling green finance products geared to SMEs in the market. This project is funded by the European Union under the SWITCH-Asia Programme. It started in February 2018 and will continue up to January 2022. Tha Bar Wa promotes cleaner production within the food and beverage industry by supporting wastewater treatment plants, energy efficiency, and renewable energy.[104]

FUTURE INITIATIVES / REFORM

In the industry of garment production, there is an initiative (SMEs for Environmental Accountability, Responsibility and Transparency ("**SMART**")) financed by the European Union to encourage the garment companies in Myanmar to comply with environmental and social standards in order to gain access to international markets.[105]

The initiative has already seen two phases, SMART 1 and SMART 2, completed successfully. The third phase which spans from 2019 to 2022 focuses on resource efficiency and sustainability in Myanmar's garment industry. The project will bring together experts, factories and the relevant ministries to deliver

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[99] Business Times article "Myanmar's progress towards a bond market boon to private, state firms" (31 January 2019).
[100] *Ibid*.
[101] *Ibid*.
[102] Asian Development Bank press release "Myanmar, ADB Sign $80 Million Loan Agreement to Improve Connectivity in Ayeyarwaddy Delta" (10 February 2015).
[103] The World Wide Fund press release "Green Finance for Myanmar's Industries Through Tha Bar Wa" (27 November 2018).
[104] The World Wide Fund website on "Tha Bar Wa".
[105] European Commission website on "SMART Myanmar II" (10 March 2020).

training and capacity building programmes for sustainable practices.[106]

At the same time, SMART does not just focus on sustainability of the garment industry. In return for financing of its programmes, SMART is also involved in initiatives related to green and sustainable financing. The Association of Development Financing Institutions in Asia and the Pacific (ADFIAP) works with SMART's project office in Yangon to provide training to develop local regulatory capacity and knowledge of private sector loan managers and loan officers in green financial products and services. The project advocates for initiatives such as reduced interest loan packages for wastewater treatment facilities or reduced interest loans for installation of photovoltaic solar panels.[107]

SMART is also coordinating with the Myanmar Central Bank to develop the "National Green Finance Guidelines", which have yet to be released.[108]

Note: As of the time of writing, most private banks are open but have limited their operations following the widespread participation of citizens in the civil disobedience movement (CDM) - a protest campaign to resist the military government, following the declaration of a state of emergency on 1 February 2021.

[106] Myanmar Times article "EU to boost garment industry in Myanmar" (9 December 2019).

[107] SMART Textile & Garments website on "Green Finance": https://smartmyanmar.org/en/green-finance .
[108] *Ibid*.

PHILIPPINES

OVERVIEW

The Philippines is located in an area that is prone to earthquakes and typhoons, and this has made its people acutely aware of the effects of climate changes. In 2019, the Philippines became a member of the Coalition of Finance Ministers for Climate Action and has since then, endorsed the Helsinki Principles that promote national climate action, especially through carbon pricing, macro-fiscal policy, public budgeting, and financial sector initiatives.[109]

For all its vulnerabilities to climate risks, the country has emerged as a regional leader in sustainable finance, accomplished through the collective efforts of the government, banks and businesses. [110] The central bank of the Philippines, the Bangko Sentral ng Pilipinas ("**BSP**") champions the promotion of the sustainability agenda in the financial system.[111] The Sustainable Finance Framework [112] ("**Sustainable Finance Framework**") requires banks to embed sustainability principles in their corporate governance framework, risk management systems, and strategic objectives.[113]

BSP is also a member of the Network for Greening the Financial System (NGFS), a group of central banks and supervisors organised to enhance the role of the financial sector in managing climate and other environment-related risks and mobilise capital to support the transition towards a sustainable economy.[114]

BSP, together with the Department of Finance and other key government agencies, known as the "Green Force", has embarked on the development of a principles-based taxonomy. [115] This is intended to harmonise definitions for incoming investors and coordinate green policy and regulations.

To create a conducive environment for the development of a sustainable financial market, among other measures, the Philippine Securities and Exchange Commission ("**PSEC**") adopted the ASEAN Green Bond Standards (GBS), ASEAN Social Bond

Phillipines

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[109] The Coalition of Finance Ministers for Climate Action press release "COP25: Finance Ministers from over 50 countries join forces to tackle climate change" (9 December 2019).
[110] BusinessWorld article "Philippines cited for ASEAN green-finance leadership"(27 November 2020).
[111] "Philippine Banking System: Transforming for Economic Recovery" – Speech by Mr Benjamin E. Diokno, Governor of BSP at the Joint Foreign Chambers of the Philippines Webinar on 9 March 2021.
[112] Bangko Sentral ng Pilipinas, Circular No. 1085, series of 2020.
[113] UN Global Compact Network Singapore Report "Closing the SDG Financing Gap in ASEAN: A Sustainable Finance Guide For Corporates" (2020).
[114] *Supra* note 111.
[115] *Ibid.*

Standards (SBS) and the ASEAN Sustainability Bond Standards (SUS) ("**ASEAN Standards**") through its "Guidelines on the Issuance of Sustainability Bonds under the ASEAN Sustainability Bonds Standards in the Philippines" ("**PSEC Guidelines**").[116]

The private sector has also been largely supportive and since the adoption of the ASEAN Standards, there has been rapid growth of the Philippine green bond markets. As of 30 June 2021, the total ASEAN-labelled Green, Social, and Sustainability Bonds issued amounted to US$12.07 billion of which US$4.28 billion or 38% were issued by Philippine companies.[117]

FRAMEWORK

Sustainable Finance Framework

The Sustainable Finance Framework sets out the expectations of BSP on the integration of sustainability principles (including those covering environmental and social ("**E&S**") risk areas, in the corporate governance and risk management frameworks) as well as in the strategic objectives and operations of banks.

A key area emphasised under the Sustainable Finance Framework is the importance of the role of the board of directors in the adoption of sustainability principles across each bank's organisation. Another key emphasis is the establishment of an environmental and social risk management system within banks to manage specific risk areas, such as credit risk management system. The broad principles on E&S risk management, and an outline of the new sustainability disclosure requirements that banks must include in their annual reports is found in the Sustainable Finance Framework.[118]

To help banks comply with the Sustainable Finance Framework, one of the strategic priorities of the BSP from 2020-2023 is the Sustainable Central Banking Program, part of which is a scheme that enables the regulators to coordinate with stakeholders on how the latter can comply with the Sustainable Finance Framework, during the three-year transition period that started in May 2019.[119]

Agri-Agra Law for Banks

To ensure that there is funding for maintenance of agricultural supply, Philippines has in place certain policy of implementing rules and regulations[120] on banks which mandates that at least 25% of banks' total loanable funds has to be set aside for agriculture and fisheries, of which at least 10% shall be made available for agrarian reform beneficiaries.[121]

Green Energy Option Program

A program, known as the "green energy option program" ("**GEOP**") was launched in 2018 to allow large consumers using 100 kilowatts or more to select eligible renewable energy providers to supply their power needs.[122] As of June 2021, there were a total of 12 renewable energy firms in the GEOP suppliers list.[123] Concerned parties are still awaiting the Energy Regulatory Commission to release the regulatory framework for the GEOP and the rules governing the program.[124]

PSEC Guidelines

The PSEC Guidelines were enacted to provide guidance for issuers as well as a measure of assurance to investors that bonds carrying the ASEAN Green and Sustainability labels adhere to international best practice. Among other things, the PSEC Guidelines state that the Guidelines on the Issuance of Sustainability Bonds under the ASEAN Sustainability Bond Standards shall apply to the issuance of ASEAN Sustainability Bonds in the Philippines. The PSEC Guidelines also require the issuer of an ASEAN Sustainability Bond to comply with both the ASEAN

[116] PSEC Memorandum Circular No. 8, series of 2019 titled "Guidelines on the Issuance of Sustainability Bonds under the ASEAN Sustainability Bonds Standards in the Philippines"(25 April 2019).
[117] PSEC, Markets and Securities Regulation Department "Sustainable Finance Market Update (As of 30 June 2021)".
[118] "Integrating sustainability in corporate strategy – BSP sustainable finance framework" – Speech by Mr Benjamin E. Diokno, Governor of BSP at the Institute of Corporate Directors (ICD) Corporate Governance Advocacy Webinar "Pilipinas: Aspire, Rise, Sustain Series" on 28 October 2020.
[119] Philippine News Agency press release, "BSP eyes incentives for banks' sustainable finance compliance" (27 August 2020).
[120] The Implementing Rules and Regulations (IRR) of the Agri Agra Reform Credit Act 2009 (Republic Act 10000) (14 July 2011).
[121] Republic of the Philippines Department of Agriculture, "Guidelines to Implement New Agri-Agra Law Issued".
[122] Department of Energy, "Green Energy Option Program".
[123] BusinessMirror article "DOE adds 2 firms to green energy suppliers list" (14 June 2021).
[124] As at the date of publication of this Guide, the rules have yet to be issued.

GBS and ASEAN SBS. The proceeds allocated for the project must not be used for Ineligible Projects specified by the ASEAN GBS as well as the ASEAN SBS. The PSEC reserves the right to impose limitations on the use of "ASEAN Sustainability Bond" label by any issuer for reasons consistent with public interest and protection of investors, the call for transparency and the need to ensure integrity of the ASEAN Sustainability Bonds.[125]

CURRENT INITIATIVES, INCENTIVES AND SCHEMES

Pursuant to Republic Act No. 11534 or Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, performance-based fiscal incentives are provided to priority industries. The Department of Finance seeks to push for the grant of performance-based tax incentives to the renewable energy sector under the government's strategic investment priority plan. In addition, green projects will be extended enhanced deductions for their research and development activities as well as larger deduction for labor force training as companies shift to green jobs.[126]

Before the formalisation of the Sustainable Central Banking Program, the government has already launched several green initiatives and these include the Green Bond Fund and Energy Saving Initiatives.

Green Bond Fund

Philippines partcipated in the Green Bond Fund launched by the Bank for International Settlements as part of its sustainable investing in reserve management.[127]

BSP has reportedly already invested a total of US$350 million in the Green Bond Fund to encourage sustainable investing and to diversify the country's gross international reserves.[128]

Energy Saving Initiatives

BSP also implemented the Monetary Board Paperlite Facility that resulted in the significant reduction of paper usage during Monetary Board meetings, and installed energy-efficient mechanisms such as solar panels and inverter technology in air-conditioning systems.[129]

FUTURE INITIATIVES

Further Guidance on Interplay of E&S Risks and Key Risks Areas

Apart from the broad principles set out in the Sustainable Finance Framework with respect to the adoption of an E&S Risk Management System, BSP will be issuing more granular expectations covering the interplay of E&S risks and the key risk areas such as credit, market, and operational risks.[130]

Renewable Energy Projects

Among other things, the Philippines Renewable Energy program targets for a 55.8% share of power mix by 2040. The Department of Energy cleared 103 projects for grid impact studies as of end-2020. It also issued clearance for grid impact studies to 73 renewable energy projects, 26 of which are solar projects, 21 hydropower projects, 13 renewable hubs, 11 wind projects, one waste-to-energy project and one integrated renewable energy project.[131]

The Philippines expects to attract an estimated $11.9 billion worth of wind and solar power investment by 2030, which represents around 1% of Asia Pacific's total wind and solar investments.[132]

The Department of Energy and Department of Agriculture are working together to implement renewable energy projects in the agriculture and fishery sectors to promote the use of clean energy in securing and supporting food production.[133]

[125] *Supra* note 116.
[126] INQUIRER.net article, "Tax perks dangled to pull up more 'green' energy investments to PH" (2 November 2020).
[127] "Philippine banking system - "Crossing the threshold" for economic and financial recovery" – Speech by Mr Benjamin E. Diokno, Governor of BSP at the 53rd Anniversary Financial Executives of the Philippines on 14 January 2021.
[128] *Supra* note 118.
[129] *Ibid.*
[130] *Supra* note 111.
[131] PSEC, Markets and Securities Regulation Department Sustainable Finance Market Update (As of 28 February 2021).
[132] BusinessWorld article "PHL solar, wind investments projected at $11.9 billion by 2030" (28 June 2021).
[133] Department of Agriculture press release "DA, DOE join forces in promoting renewable energy use in agri-fishery" (6 August 2020).

Carbon Taxation

The Philippines is weighing the option of implementing carbon pricing and taxation as a means of combating climate change. This is in recognition of the need to implement measures to reduce carbon emissions while balancing the short-term versus long-term economic objectives and environmental goals.[134]

[134] INQUIRER.net article, "PH looks into carbon tax to fight climate change" (1 March 2021).

SINGAPORE

OVERVIEW

To strengthen Singapore's commitments under the United Nation 2030 Sustainable Development Agenda and the Paris Agreement,[135] the Singapore government has sketched out Singapore's path into the future with "Green Plan 2030". The Plan contains five pillars namely, City in Nature, Sustainable Living, Energy Reset, Green Economy and Resilient Future.[136] The initiatives developed in connection with the Green Economy agenda would, in particular, change how business will be conducted in Singapore. One of the initiatives identified by the government in the Singapore Green Plan 2030 is to develop Singapore as a leading centre for green finance in Asia and globally to support a sustainable Singapore and facilitate Asia's transition to a sustainable future.[137]

Supporting the government's green aspirations, there is a growing inclination towards greener practices and deals in the financial industry. Financial institutions and banks in Singapore have in recent years set more ambitious targets to create or fill their investment portfolios with more green and sustainable financing products.

<u>Green Finance Action Plan</u>

A Green Finance Action Plan was launched by the Monetary Authority of Singapore ("**MAS**") in 2019 to support Singapore's vision to be a leading centre for green finance in Asia.[138] There are four key elements to the Green Finance Action Plan:[139]

- highlight the financial sector's exposure to environmental risks;
- develop green and sustainable financing in the markets;
- make use of financial technology ("**FinTech**") to enable sustainable finance flows; and
- improve knowledge in sustainable finance.

A brief description of each of the four elements is set out below:

[135] The Paris Agreement is a legally binding international treaty on climate change which entered into force in November 2016 pursuant to the United Nations Framework Convention on Climate Change.
[136] Ministry of National Development press release "Singapore Green Plan 2030 Charts Ambitious Targets for Next 10 Years to Catalyse National Sustainability Movement" (10 February 2021).
[137] *Ibid*.
[138] "Green Finance for a Sustainable World" - Key Speech by Mr Ong Ye Kung, Minister for Education, Singapore and Board Member, MAS, at SFF x SWITCH 2019 on 11 November 2019.
[139] "Harnessing the Power of Finance for a Sustainable Future"- Keynote Speech by Mr Ravi Menon, Managing Director, MAS, at the Financial Times Investing for Good Asia Digital Conference on 13 October 2020.

(i) Environmental Risk Management

The Green Finance Action Plan provides the rationale and impetus for environmental risks to be recognised and managed, and for financial institutions and banks to develop green and sustainable financing. It acknowledges the fact that global financial assets are at risk of severe write-down if global warming persists, and if laggards do not take the appropriate preparatory steps to transition to a green economy, assets across various sectors such as infrastructure, industrials and energy may not be optimised.[140]

In December 2020, MAS issued the Guidelines on Environmental Risk Management ("**ERM Guidelines**") for banks, insurers and asset managers (collectively, "**FIs**").[141] These guidelines set out expectations for FIs to identify, assess, monitor, mitigate and disclose environmental risks, and are meant to cover environmental risks beyond climate change such as pollution and loss of biodiversity as well as changes in land use. The guidelines are calibrated to the business activities of each sector of the financial industry.[142]

For best practices in environmental risk management in the financial industry, the Green Finance Industry Taskforce ("**GFIT**"), convened by MAS, has developed the "*Handbook on Implementing Environmental Risk Management*" ("**Handbook**").[143] The ERM Guidelines require board and senior management of FIs to have an institution-wide view of the entities' environmental risk exposures and oversee the integration of such risk into the entities' enterprise risk management framework.[144] For example, the Handbook emphasises that sustainability-related risks must not be viewed in isolation but ought to be viewed alongside all other mainstream and material risks for investments or asset management.[145]

In addition, to assist FIs in complying with the requirements in the ERM Guidelines on disclosure of environmental risks applicable to their businesses, some examples on best practice disclosure are highlighted in the Handbook. Further guidance on climate reporting is found in the "Financial Institutions Climate-related Disclosure Document" issued by GFIT ("**FCDD**"). The FCDD adopts the recommendations of the Task Force on Climate-related Financial Disclosures as the guiding framework for disclosure.[146]

(ii) Green and Sustainable Financing

The second element of the Green Finance Action Plan is to promote and develop a cohesive green ecosystem for financial institutions to thrive in. Singapore is ASEAN's largest green finance market, accounting for close to 50% of cumulative ASEAN green bond and loan issuances,[147] and this is intended to form the key thrust of the Action Plan to develop green finance solutions and markets.

In addition to promoting green and sustainability-linked financing, Singapore has also been developing solutions such as Insurance Linked Securities (i.e. catastrophe bonds) to address climate risks.

Rajah & Tann Singapore has acted in more than 15 catastrophe bond transactions domiciled in Singapore so far. These include the following deals where our firm acted as the Singapore deal counsel:

- A$75 million issuance of Series 2019-1 Class A Principal At-Risk Variable Rate Notes by Orchard ILS Pte, Ltd., a special purpose reinsurance vehicle ("**SPRV**"), with Insurance Australia Limited, IAG Re Labuan (L) Berhad, Labuan F.T., Malaysia and IAG Re Singapore Pte Ltd on behalf of Insurance Australia Group Limited, as the ceding insurers. This is the first catastrophe bond transaction in Singapore issued by the first SPRV licensed by MAS. This transaction is also the first Australian only perils catastrophe bond and the first AUD denominated catastrophe bond in the market;

[140] *Ibid*.
[141] MAS Guidelines on Environmental Risk Management (Banks) (December 2020), MAS Guidelines on Environmental Risk Management (Asset Managers) (December 2020) and MAS Guidelines on Environmental Risk Management (Insurers) (December 2020) (collectively, "**MAS ERM Guidelines**").
[142] *Ibid*, at [2.1].
[143] The Association of Banks of Singapore "Handbook on Implementing Environmental Risk Management" issued by GFIT (28 January 2021) ("**GFIT Handbook**").
[144] MAS ERM Guidelines at [3].
[145] GFIT Handbook at [5.2.3].
[146] The Association of Banks of Singapore "Financial Institutions Climate-related Disclosure Document" issued by GFIT (19 May 2021).
[147] *Supra* note 116.

- US$100 million issuance of Series 2019-1 Principal At-Risk Variable Rate Notes by First Coast Re II. This is the first Rule 144A catastrophe bond issuance in Singapore;

- US$100 million issuance of Series 2020-1 Class A Principal At-Risk Variable Rate Notes by Akibare Re Pte. Ltd., a SPRV, with Mitsui Sumitomo Insurance Co., Ltd as the ceding insurer;

- US$400 million issuance of Series 2020-1 Class A Principal At-Risk Variable Rate Notes by Alamo Re II Pte. Ltd., a SPRV, with Hannover Ruck SE as the ceding reinsurer;

- US$42,135,000 issuance of Series 2021-1 Participating Notes by Phoenix 1 Re Pte. Ltd., a SPRV, with MS Amlin Asia Pacific Pte. Ltd. and MS Amlin Labuan Ltd as the cedants. This transaction is the first catastrophe bond transaction solely focused on Asian property catastrophe risks.

More details on the government's schemes to develop green and sustainability-linked financing are covered in the sections below.

(iii) Green FinTech

Project Greenprint was launched in December 2020 by MAS to develop a vibrant Green FinTech ecosystem in Singpore. Project Greenprint aims to promote a greener financial ecosystem through:[148]

- mobilising capital for small-medium enterprises and FinTech firms working on green and sustainable projects as they often face difficulty accessing capital in an efficient manner;

- deploying technology to collect reliable data to better monitor commitment to the relevant green standards and requirements; and

- exploring the application of artificial intelligence and other technologies on third-party data sources, such as ratings services and crowd-sourcing, to quantify the environmental, social and governance ("**ESG**") impact of potential investments and loan portfolios.

(iv) Green Knowledge - Singapore Green Finance Centre

The Singapore Green Finance Centre is a collaboration between Singapore Management University and Imperial College Business School and is expected to conduct research tailored to the Asian context in relation to climate finance, amongst others.[149]

FRAMEWORK

(a) Green Loans and Sustainability Linked Loans

As at the date of publication of this Guide, there is no legislation prescribing the requirements of green loans or sustainability linked loans ("**SLLs**").

In place of prescriptive legislation in this aspect, banks are required under the ERM Guidelines for banks to, among other things, take into account their environmental risk exposure. This entails each bank having to engage with its customers and help the customers improve their environmental risk profile and transition to sustainable business practices over time. Banks, merchant banks and finance companies may help their customers improve and transition to greener practices by offering them green loans and SLLs.

GFIT conducts a training programme, the Capacity Building Series 2021 to 2022, which comprises seminars, workshops and e-learning modules for FIs and corporates to build capacity in sustainable finance. The objectives of the trainings are to strengthen the capabilities of the FIs in environmental risk management, enhance their environment-related disclosures, deepen knowledge of green finance instruments, and enable FIs and corporates to customise sustainable financing solutions for transition sectors.

The green loans and SLLs offered by banks in Singapore are usually based on the Green Loan

[148] "FinTech for an Inclusive Society and a Sustainable Planet"- Remarks by Mr Ravi Menon, Managing Director, MAS, at Singapore FinTech Festival 2020 on 8 December 2020.

[149] MAS press release "Singapore's First Centre of Excellence to Drive Asia-focused Green Finance Research and Talent Development" (13 October 2020).

Principles[150] and the Sustainability Linked Loan Principles[151] which are issued jointly by the Loan Market Association ("**LMA**"), the Asia Pacific Loan Market Association ("**APLMA**") and the Loan Syndications and Trading Associations ("**LSTA**").

A number of banks in Singapore now have specialised departments overseeing sustainability and ESG-related banking products and services. These banks have the capacity to develop their respective frameworks and requirements for providing green loans and SLLs to various business sectors.

Rajah & Tann Singapore has been involved in a number of green loans and SLLs, including the following:

- Acted for two leading Singapore banks as joint lenders and sustainability coordinators in relation to the grant of a S$700 million SLL to a Singapore-based power plant for its gas-fired co-generation plant. This is the first SLL in Singapore's energy sector;

- Acted for the borrower and guarantor of a S$500 million sustainability linked term loan facility granted by United Overseas Bank Limited. This is one of the largest sustainability-linked bilateral loans in Singapore's real estate sector.

- Acted for a leading Singapore bank in a S$300 million SLL to the trustee of a REIT listed on the Mainboard of the Singapore Exchange Securities Trading Limited ("**SGX-ST**"). The interest rate of the SLL is linked to the performance of selected sustainability performance targets disclosed in the REIT's annual sustainability reports.

- Acted for a subsidiary of a leading Southeast Asian solar energy system developer, owner and operator in Singapore, in its capacity as a borrower in a S$50 million loan obtained from ING Bank N.V., Singapore Branch for the construction and development of a portfolio of rooftop solar projects in Singapore. This is the first green loan in ASEAN for a portfolio of rooftop solar projects that is compliant with the Green Loan Principles issued in 2018 by the LMA and APLMA.

- Acted for a leading Singapore bank in the first SLL in Singapore's maritime industry. The three-year, 30 million euro (S$47.8 million) equivalent loan features an interest rate adjustment linked to an ESG target of the borrower that is a leader in the maritime sector.

(b) Green Bonds and Sustainability Linked Bonds

As at the date of publication of this Guide, there is no specific legislative framework governing green bonds or SLBs.

The Singapore government announced in Budget 2021 that it will be issuing green bonds to finance selected public infrastructure projects. Public sector green projects totalling up to S$19 billion has been identified for this purpose. The Ministry of Finance indicated that the issuance of the green bonds will "serve as a reference for the Singapore Dollar corporate green bond market, including the standards and framework applied, and yields achieved". This initiative will further strengthen Singapore position as the leader of the green bonds market in ASEAN.

In addition to green bonds, a fair number of social bonds, sustainability bonds and sustainability linked bonds ("**SLBs**") are listed on the SGX-ST. SLBs are the latest additon to the SGX-ST's wide spectrum of debt securiites. Our legal teams in Indonesia and Singapore at Assegaf Hamzah & Partners and Rajah & Tann Singapore LLP respectively, worked together to advise PT Japfa Comfeed Indonesia Tbk, the largest agrifood company in Indonesia, in the issuance of US$350 million SLB, one of the four SLBs listed on the SGX-ST to date.

Complementing the above efforts to support the Singapore green and sustainable economy, since 2016, the Singapore Exchange Limited ("**SGX**") has established the SGX Sustainability Indices that aim to, among other things, provide guidance for investors who wish to invest in listed companies with good ESG practices and improve the profile and exposure of companies with good ESG scores. Notably, the iEdge SG ESG Indices are made up of stocks listed on the SGX-ST that are screened in accordance with transparent ESG criteria set by Sustainalytics, a global

[150] APLMA, LMA and LSTA, "Green Loan Principles" (February 2021); APLMA, LMA and LSTA, "Guidance on Green Loan Principles" (February 2021).

[151] APLMA, LMA and LSTA, "Sustainability Linked Loan Principles" (May 2020); APLMA, LMA and LSTA, "Guidance on Sustainability Linked Loan Principles" (May 2020).

responsible investment research firm specialising in ESG research and analysis. Listed companies that are included in the iEdge SG ESG Indices are considered ESG leaders with established and leading ESG practices.

INCENTIVES AND SCHEMES

(a) ***Green and Sustainability-Linked Loan Grant Scheme***[152]

As part of the Green Finance Action Plan, the Green and Sustainability-Linked Loan Grant Scheme ("**GSLS**") was launched by MAS.[153]

Effective as of 1 January 2021, the GSLS stands out as the first of its kind in the world that seeks to develop and support the growth of green and sustainable loans. There are two broad purposes of the scheme. First, to help corporates or financial institutions that are interested in obtaining green and sustainable financing defray the expenses of engaging independent service providers to certify whether a loan is green and sustainable. Secondly, to incentivise financial institutions to develop frameworks for green loans and SLLs.

There are two tracks to the GSLS, Track A and Track B, which are elaborated below.

(i) Track A – Green and Sustainability Linked Loans

Track A is a grant of up to S$100,000 per loan over a three-year period to help an applicant defray some qualifying expenses of engaging sustainability advisory and assessment service providers to undertake certain work to be done pre-origination and post-origination of the green or sustainability linked loans to validate the green and sustainability credentials of the loans.

To qualify for a grant under Track A of the GSLS, a loan must meet, among other things, the following key requirements:[154]

- the borrowing entity may be a company or financial institution based onshore or offshore including international organisations but excluding sovereigns;
- the tenure of each such loan has to be at least three years, with a quantum of at least S$20 million and cannot be a refinancing of existing green and sustainability linked loans;
- more than 50% of the gross revenue from such loan has to be attributable to a Financial Sector Incentive ("**FSI**") company;
- the sustainability advisory and assessment work is to be performed in Singapore; and
- at pre-origination of a green loan, there should be an external review that demonstrates alignment of the loan with internationally-recognised green loan principles;
- for a SLL:
  - o at pre-origination of the loan, there has to be either an external review which demonstrates alignment of the loan with internationally-recognised SLL principles and minimally two of the total sustainability performance targets ("**SPTs**") of such loan contribute to environmental objectives, <u>or</u> such loan has to have ESG ratings; and
  - o at post-origination of the loan, there has to be an external review made annually to verify the attainment of the SPTs.

(ii) Track B - Green and Sustainability Linked Loan Frameworks

Track B is a grant to a FSI company[155] to help defray the costs and expenses in the development of green and sustainability linked loan frameworks. Frameworks developed for small and medium sized enterprises ("**SMEs**") and individuals are eligible for 90% co-funding with a cap at S$180,000 of total costs, over a period of three years. Any other frameworks are eligible

[152] Brochure on "Green & Sustainability-Linked Loan Grant Scheme (GSLS)" issued by MAS in respect of the launch of the GSLS on 24 November 2020.
[153] MAS press release "MAS Launches World's First Grant Scheme to Support Green and Sustainability-Linked Loans" (24 November 2020).
[154] MAS webpage "Green and Sustainability-Linked Loans Grant Scheme".
[155] A FSI company is a licensed financial institutions set up in Singapore and is under the Financial Sector Incentive Scheme. To read more about this scheme, please see MAS webpage "Financial Sector Tax Incentive Schemes".

for 60% co-funding with a cap at S$120,000 of total costs, over a period of three years.

To qualify for a grant under Track B of the GSLS, a framework must meet, among other things, the following key requirements:[156]

- the design, conceptualisation of the framework, and assessment work of the green or sustainability linked aspects of the loans originated from the framework, should all be performed in Singapore;

- 50% of gross revenue from the sustainability assessment and advisory work has to be attributable to Singapore-based providers;

- at pre-origination, there should be either an external review to demonstrate alignment with internationally recognised green or sustainability linked loan principles, or a co-creation of the framework with sustainability assessment and advisory service providers; and

- at post-origination, there should be an external review annually to demonstrate continued alignment of the framework with internationally recognised green or sustainability-linked loan principles.

(b) <u>Sustainable Bond Grant Scheme ("SBGS")</u>

Effective as of 2017, the SBGS[157] provides grant support for pre-issuance costs expended to review the issuance and certify that such bonds are aligned with any internationally recognised green, social, sustainability and sustainability linked bond principles. Further, since 1 January 2021, the SBGS has been expanded to include post-issuance costs over the tenure of the bond as well.

The SBGS (which is in force until 31 May 2023) seeks to encourage issuers of green, social, sustainability and sustainability linked bonds by covering up to S$100,000 of the qualifying expenses of engaging external reviewers to ascertain their green, social, sustainability and sustainability-linked bond status.

To qualify for a grant under the SBGS, issuers are required to take note of the following key requirements:[158]

- at pre-issuance, any issuance of bonds of any currency must be externally reviewed to show alignment with internationally recognised green, social, sustainability and sustainability linked principles;
  - o each issuance must be at least S$200 million or, alternatively, be a bond programme of at least S$200 million with an initial issuance of at least S$20 million;
  - o the minimum tenure of each issuance is one year;

- for sustainability linked bonds, there is an additional requirement for post issuance external reviews of the bond for the first three years or up till the tenure of the bond, whichever is earlier;

- the review of the issuance needs to be performed by external reviewers in Singapore;

- the issuer may be a first time or repeat green, social, sustainability and sustainability linked bond issuer and may apply for the grant on multiple occasions; and

- the sustainability advisory and assessment work is to be provided by financial institutions in Singapore.

FUTURE INITIATIVES / REFORM

(a) Proposed Taxonomy for Singapore-based Financial Institutions

On 28 January 2021, GFIT released a proposed taxonomy for Singapore-based financial institutions for public consultation. The proposed taxonomy helps these institutions identify green activities or activities which are transitioning to a greener purpose.[159]

The development of a new taxonomy, when there are taxonomies that have been / are being developed elsewhere (i.e. the European Union ("**EU**") Taxonomy

[156] *Supra* note 131.
[157] MAS webpage "Sustainable Bond Grant Scheme".
[158] *Supra* note 134.
[159] MAS press release "Industry taskforce proposes taxonomy and launches environmental risk management handbook to support green finance" (28 January 2020).

Regulations), may be surprising if one desires consistency in the global market.[160]

However, there are good reasons why this project has been embarked upon:[161]

- First, an autochthonous form of taxonomy for Singapore-based financial institutions may be appropriate considering differences in expectations of what is considered environmentally sustainable in the EU compared to Asia.

- Secondly, institutions in Singapore would need to consider the environmental targets within other frameworks (with a context) and assess whether they are compatible with the socio-economic interests in our region.

- Thirdly, developing a taxonomy (with a context) which accounts for the socio-economic interests of the ASEAN region may increase the adoption in our region.

- Lastly, the proposed taxonomy can also circumvent any pitfalls which might be discovered in the existing taxonomies (through the public consultation or the experience of those who have adopted the Taxonomy Regulations in the EU). Some areas have already been identified such as the need for improvements in the disclosure and reporting standards, customised classification based on the sectors and industries unique to our region, etc.

As at the date of publication of this Guide, GFIT has yet to issue its response on the feedback received pursuant to the consultation paper on the proposed taxonomy. Due to an increased interest in green and sustainable finance, the GFIT consultation recognises that market participants might run the risk of putting the cart before the horse especially if a proper taxonomy is not developed before the proliferation of products, terminologies and misunderstanding in the market.[162] We await the results of the public consultation and hope that development of a taxonomy, in the context of Singapore and perhaps the broader ASEAN region, will facilitate sustainable growth in sustainable financing.

(b) Global Exchange and Marketplace for High-Quality Carbon Credits

On 20 May 2021, SGX announced that it is developing a carbon exchange and marketplace, Climate Impact X ("**CIX**") through a joint venture involving DBS Bank, SGX, Standard Chartered and Temasek.

With the aim of becoming a global exchange and marketplace for high-quality carbon credits, CIX will establish the Exchange and the Project Marketplace, targeted to be launched by end 2021. The Exchange will facilitate the sale of large-scale high-quality carbon credits through standardised contracts, catering primarily to multinational corporations and institutional investors. The Project Marketplace will cater to a broader spectrum of corporates seeking to participate in the voluntary carbon market, offering from a curated selection of Natural Climate Solutions projects that can help meet their sustainability objectives.

CIX will help corporates deal with carbon emissions and will encourage more carbon credits projects worldwide which will require the support of a vibrant sustainable finance ecosystem.

[160] The Association of Banks of Singapore, GFIT Consultation Paper on "Identifying a Green Taxonomy and Relevant Standards for Singapore and ASEAN" (January 2021) at [17].

[161] *Ibid*, at [40]-[46].
[162] *Ibid*, at [114]-[116].

THAILAND

OVERVIEW

The concept of sustainability has gained traction in Thailand over recent years as corporations begin to address sustainability principles and incorporate them into their businesses. Banks, financial institutions and regulators are also providing more support for sustainable financing practices with a view to bolstering cooperation between regulators and the industry in this regard and enhance the sustainability of the overall Thai economic growth.

FRAMEWORK

Currently, there are no laws that directly address sustainable finance in Thailand. However, Thai Bankers' Association and the Bank of Thailand ("**BOT**") recognise the importance of adopting sustainable business practices that address environmental, social and governance ("**ESG**") risks and have issued a number of guidelines and policies to drive awareness of and support sustainable finance in Thailand. Set out below are some of the existing guidelines and policies that promote sustainable finance in Thailand.

(a) Thai Bankers' Association Sustainable Banking Guidelines - Responsible Lending

In mid-August 2019, the Thai Bankers' Association issued the Sustainable Banking Guidelines on Responsible Lending.[163] These guidelines are intended to set the minimum standard of responsible lending practices for banks in Thailand.

Under these guidelines, "responsible lending" covers material ESG issues such as climate change, ocean health, human rights and anti-corruption. These guidelines also highlight four elements that banks are expected to adopt to ensure that they adequately manage ESG risks associated with their lending activities, namely:

- leadership and responsible lending commitment;
- stakeholder engagement;
- internal implementation mechanisms; and
- transparency.

[163] Thai Bankers' Association "Sustainable Banking Guidelines – Responsible Lending" (13 August 2019).

(b) BOT Notification on Market Conduct

In adopting sustainable finance, corporations should strive toward goals that delve deeper than merely building brand reputation for marketing purposes. Businesses should integrate sustainability principles into their practices to ensure that their end customers are well protected.

BOT acknowledges the importance of encouraging financial service providers to cater to customers more responsibly and ethically with the objective of driving and preserving sustainable business operations. Thus, in early 2018, BOT issued Notification No. SVG 1/2561 Re: Regulations on Market Conduct to encourage financial service providers to adopt fair and responsible market conduct and have appropriate management to promote sustainable economy and ensure customers' security and well-being.[164]

The notification sets minimum standards on various issues ranging from corporate structure and responsibilities of senior management and board of directors of financial service providers, client segmentation and remuneration schemes, to sales processes and data privacy.

These guidelines should give businesses and financial service providers some accountability in disclosing product information and service quality data to ensure that their customers are adequately equipped with information to make informed decisions on products or services.

(c) Memorandum of Agreement on Basic Banking Account

Another aspect of achieving a sustainable banking and finance system involves ensuring that, fundamentally, all Thais have access to safe and affordable basic financial services.

To this end, BOT has joined forces with 16 banks to offer basic banking accounts with fee-free deposits and waived the minimum balance requirement.[165] Introduced in mid-2018, the scheme initially addressed the needs of seniors aged 65 and older and low-income earners who are recipients of the Thai government's welfare and subsidy scheme.

This scheme aims to make available access to basic banking and financial services as part of a person's fundamental right and serve as a step forward in combatting social inequality and driving financial sustainability within Thailand. Ultimately, the scheme will play an important role in supporting sustainable and extensive economic growth of Thailand.

(d) Trends in Sustainable Finance Transactions

A number of green bonds, social bonds and sustainability bonds have been issued in Thailand to fund sustainability-related causes since 2018.[166] In 2020, the Thai Rating and Information Services Co. Ltd ("**TRIS**"), a credit rating agency initiated by the Ministry of Finance and BOT to facilitate the development of domestic bond market, launched a local green bond verifier. The green bond verified is certified by the Climate Bonds Initiative as a new service to facilitate and promote domestic green bond financing in Thailand.[167] This translates to cost-saving for local green bond verification process as TRIS's verification fee per issuance is significantly lower than the fees charged for international verification.[168] Certified climate bonds and certified climate loans are picking up speed in Thailand. For example, in H2 2020, the government of Thailand issued a THB 30 billion sustainability bond certified by the Climate Bonds Initiative[169] to raise funds for the construction of the Bangkok Mass Rapid Transit Orange Line[170] and the Asian Development Bank ("**ADB**") has agreed to provide green loan to Energy Absolute Public Company Limited ("**Energy Absolute PCL**") to finance ongoing renewable energy projects and a countrywide electric vehicle charging network in Thailand. This THB 1.5 billion green loan is a certified climate loan by the

[164] BOT "Notification No. SVG 1/2561 Re: Regulations on Market Conduct" (12 January 2018).

[165] BOT press release "Press News No. 46/2561: Basic Banking Account" (July 2018).

[166] ASEAN Working Committee on Capital Market Development, "Report on Promoting Sustainable Finance in Asean" (29 April 2020).

[167] Bangkok Post article "Tris Rating debuts green bond verifier" (20 November 2020).

[168] *Ibid.*

[169] Climate Bonds Initiative is an international organisation which aims to promote investment in projects and assets necessary for a rapid transition to a low carbon and climate resilient economy. It administers the international Climate Bond Standards and Certification Scheme.

[170] Climate Bonds Initiative press release "Thai Govt Marks 2020 with Certified Sovereign Green Issuance: Commitment to Recovery, Sustainability, Infrastructure" (9 December 2020).

Climate Bonds Initiative, the first in Asia with such a certificate.[171] Energy Absolute PCL has also issued several green bonds where their proceeds are used to finance projects and assets relating to renewable energy.

INCENTIVES AND SCHEMES

(a) ***Incentives for Green, Social and Sustainability Bond Issuance***

As the focus begins to shift towards sustainable development, regulators also provide incentives to create more opportunities and support companies' efforts towards sustainable finance. Notably, the Securities and Exchange Commission, Thailand ("**SEC**") has administered a number of guidelines and incentives for green, social and sustainability bond issuances. In May 2019, SEC issued guidelines on issuances and offers for sale of green, social and sustainability bonds to encourage the financing of projects that contribute to environmental conservation and social development.[172]

SEC has also approved the Thai Bond Market Association's incentive scheme of the Thai Bond Market Association ("**ThaiBMA**") for the issuance of green, social and sustainability bond issuance in Thailand. In February 2019, the ThaiBMA issued a notification offering a waiver of application fees for green, social and sustainability bond issuance,[173] to support companies' sustainable bond issuance and reduce costs of fund-raising. Annual registration fees for bonds with a maturity date exceeding seven years are also waived, to encourage long-term sustainable finance practices.[174] These incentives will apply to bonds that have been registered up until 30 June 2021.[175]

(b) ***The Thailand Sustainability Investment ("THSI") List***

Another tangible sustainable finance incentives for corporations is being included in the Thailand Sustainability Investment ("**THSI**") list of the Stock Exchange of Thailand ("**SET**"). There is a rising trend towards sustainable investing, wherein investors focus on ESG criteria when exploring and evaluating available opportunities.

To support Thailand's efforts in sustainable financing and attracting investors who adopt a responsible investment approach, SET created the THSI list comprising listed companies in Thailand with sustainable business operations.[176] The THSI list is an avenue for companies to attract investors who are interested in integrating sustainability principles into their investment strategy.

First created in 2015, SET continually updates the THSI list as an ongoing incentive for companies to develop sustainable business practices and a means to encourage the development of Thailand financial sector. To be included in the list, companies must qualify for SET's eligibility criteria and the assessment methodology that includes examining the companies' sustainability performance under economic (including corporate governance), environmental and social indicators.

FURTHER INITIATIVES / REFORMS

Towards the end of 2019, BOT signed a memorandum of understanding with the International Finance Corporation ("**IFC**") to further advance the reach of sustainable finance in Thailand.[177] This collaboration aims to yield efforts to tackle ESG risks and encourage more sustainable practices within the financial industry.

Some of the deliverables include developing a sustainable finance policy roadmap and directing more capital to sectors and projects with environmental and social benefits. Linking capital access to sustainability

[171] ADB press release "ADB, Energy Absolute Sign Green Loan for Renewable Energy and Electric Vehicle Charging Network" (11 February 2021).
[172] SEC Guidelines on Issuance and Offer for Sale of Green Bond, Social Bond and Sustainability Bond.
[173] Notification of the Thai BMA Re: Setting the Registration Fees for Green, Social and Sustainable Bonds (14 February 2019).
[174] *Ibid*.
[175] Notification of the Thai BMA Re: Setting the Registration Fees for Green, Social and Sustainable Bonds (No. 2) (26 March 2020).
[176] SET webpage "Thailand Sustainability Investment (THSI) List".
[177] BOT and IFC joint press release "IFC and Bank of Thailand Join Hands to Accelerate Sustainable Finance in Thailand" (27 November 2019).

performance will, in and of itself, incentivise businesses and end-clients alike to help address and tackle challenges to ESG risks.

Looking ahead, talks are in place for further changes to be made to the existing regulations. For instance, SEC recently conducted a public hearing, which ended in December 2020, on proposed changes to the regulations on issuance and offer for sale of Sustainability Linked Bonds ("**SLBs**").[178] Given the nature of SLBs, these changes will help companies ease into sustainability transformation without the pressure of raising capital to fund a specific sustainable project.

As society becomes more aware of sustainability and key players become more conscious of the impact of their decisions and practices on the environment and society, so too would new standards and guidelines be created to guide businesses in the right direction toward contributing to a more sustainable economy.

[178] SEC Consultation Paper No. 38/2563: SEC hearing on proposed regulations related to issuance and offer for sale of Sustainability-Linked Bond (21 December 2020).

VIETNAM

OVERVIEW

At the national level, Vietnam's sustainable development is currently driven by (i) the National Green Growth Strategy for the period 2011 – 2020 with a vision to 2050 ("**Green Growth Strategy**"),[179] and (ii) the 2030 Sustainable Development Agenda ("**2030 Agenda**") developed in collaboration between the Vietnamese Government and the United Nations to achieve certain sustainable development goals ("**SDGs**") by 2030.[180]

As part of the 2030 Agenda, Vietnam nationalised 17 SDGs, including 115 specific development targets as a part of its comprehensive sustainable development strategy. The 17 SDGs are wide-ranging in terms of environmental and social ("**E&S**") policy, involving not only sustainable development and finance but also social considerations such as ending poverty, improving nutrition, achieving gender equality, reducing social inequalities and improving education.

The State Bank of Vietnam ("**SBV**"), the central bank of Vietnam, in approving the 2030 Agenda, has taken steps to encourage credit and financial institutions to develop products, programs, and services that lend to, incentivise, or otherwise contribute to sustainable development and green growth focused projects and businesses.[181] SBV has taken a range of actions to buttress Vietnam's sustainable development initiatives to further encourage and incentivise green credit flows.[182] Such credit programs are aligned with Vietnam's nationalised SDGs. In its latest development strategy to 2025 (with a vision to 2030), SBV has included the promotion of green credit and green banking on its agenda.[183]

Furthermore, on 17 November 2020, the new Law on Environmental Protection was enacted and will come into effect from 1 January 2022.[184] In contrast to its predecessor, the new law introduces green credit and green bonds as resources for environmental protection. It will also lay out a further roadmap for the grant of green credit and mechanisms to encourage such green credit.

[179] Decision No. 1393/QD-TTg of the Prime Minister on approval of the National Green Growth Strategy dated (25 September 2012).
[180] Decision No. 622/QD-TTg of the Prime Minister issuing the National Action Plan for the Implementation of the 2030 Sustainable Development Agenda (10 May 2017).
[181] Decision No. 1552/QD-NHNN of SBV on introducing the action plan of the banking sector for implementation of the national strategy for green growth by 2020 (6 August 2015).
[182] Decision No. 1604/QD-NHNN of SBV on approving the scheme for green banking growth (07 August 2018).
[183] Decision No. 986/QD-TTg of SBV on approval to the development strategy of the Vietnam banking sector to 2025 with a vision to 2030 (8 August 2018).
[184] Law on Environmental Protection No. 72/2020/QH14 (17 November 2020).

(a) *Challenges*

With mounting air pollution and acute consequences of climate change being increasingly apparent in Vietnam, challenges to the 2030 Agenda are many, namely:

- exponential energy demands;
- over reliance on coal and oil as primary energy sources, and the increasing demand for these;
- insufficient participation by the private sector;
- inadequate legal frameworks; and
- lack of budget.

(b) *Opportunities*

Vietnam has targeted to have a wind energy capacity of 6,200 MW by 2030.[185] As at 2018 however, only three of the 77 registered industrial wind projects had been completed and integrated with the national power grid. Targets in biomass and solar power are also falling short.

Nonetheless, Vietnam is seen to offer wide-reaching potential for sustainable finance, climate-smart agriculture, and renewable energy, as the country works towards better implementation of guiding frameworks, coupled with the support of the country's relatively strong IT infrastructure.

In this regard, Rajah & Tann LCT Lawyers is gearing up to support the development of the clean energy industry in Vietnam. Rajah & Tann LCT Lawyers has acted as the counsel in transactions in this industry, including for:

- CMX Sunseap Vietnam Solar Power in financing its US$150 million solar form in Ninh Thuan Province;

- PowerChina in financing various projects, including the Dau Tieng 1, Dau Tieng 2 and Dau Tieng 3 solar farms (420 MW), the Truong Tra Vinh V1-2 offshore wind project (48 MW), the Bac Lieu wind power plant (141MW), and the Soc Trang wind power plant (30 MW);

- a Malaysian Clean Energy Company's US$30 million acquisition of a Vietnamese hydropower project company;

- Maybank in its US$20 million facility to Song Ma for the financing of the Van Chan Hydropower Plant;

- a Vietnamese developer in divesting from its two Van Giao solar power projects (100MW) to a Thai investor; and

- an Australian solar company in its joint venture with a Vietnamese partner for the development of rooftop solar projects in central Vietnam.

FRAMEWORK

(a) *International Framework*

Vietnam understands the need for regional and international interconnectivity in order to meet its sustainable development and finance needs and has joined and partnered with other nations and international organisations to develop its sustainable programme.

Vietnam is a Sustainable Banking Network ("**SBN**") member, a network currently consisting of 57 financial regulatory bodies and banking associations from 41 emerging markets.[186] The State Securities Commission of Vietnam is also a member of the ASEAN Capital Markets Forum ("**ACMF**"), an institution that has the primary objective of developing a deep, liquid and integrated regional capital market. One of the ACMF initiatives is to foster sustainable development in the region and it has developed guidelines or standards to standardise and guide the issuance of social, sustainability, and green bond.[187]

(b) *Domestic Framework*

Vietnam seeks to align with global E&S standards and best market practices. Successful ESG integration depends on successful governance of E&S, proper E&S risk management from credit institutions and

[185] United Nations in collaboration with the Ministry of Planning and Investment, "Viet Nam's Voluntary National Review on the Implementation of the Sustainable Development Goals" (June 2018) at page 48.

[186] Sustainable Banking Network (SBN) Homepage, "SSBN — An Innovation of International Finance Corporation, World Bank Group".

[187] ACMF webpage "Initiatives: Sustainable Finance".

financial institutions, and enforcement of directives issued by the government to support this objective. These directives and Government's initiatives set quantitative objectives for financial institutions in terms of E&S risk management and they are discussed below.

(i) National Green Growth Strategy

The Green Growth Strategy that is driving Vietnam's sustainable development lays out several important viewpoints, objectives, and strategic tasks to do so.

The Growth Strategy identifies green growth and sustainable development as key national priorities and looks at involving the people, every level of government, private enterprises, and social organisations in this national effort.[188] The overall objective of the Green Growth Strategy is to make green growth the principal mode of sustainable development, with specific objectives relating to restructuring the economy to fit such ends. The strategic tasks laid out in the Green Growth Strategy revolve around the need to reduce the intensity of greenhouse gas emissions and promote the use of clean and renewable energy. One way to actualise this strategy is to stimulate foreign-invested and domestic enterprises to invest in green economic development.

In line with this objective, SBV has issued a directive that requires a credit institution to review, adjust and complete institutional framework in congruence with the objective of green growth and to finance and support environmental friendly projects or enterprises which intend to implement green growth.[189]

(ii) Sustainable Agriculture Development

Vietnam has prioritised sustainable agriculture development as a major element of its sustainable development framework. Efforts include implementing sustainable poverty reduction policies in rural areas,[190] approving an agricultural restructuring scheme with the aim of improving added value and sustainable development,[191] and other schemes focused on developing hi-tech agriculture and enhancing the application of science, technology, and technical advances to production methods.

(iii) 2030 Agenda

The 2030 Agenda is led by the Ministry of Planning and Investment with the help of provincial-level Departments of Planning and Investment. The National Assembly is responsible for monitoring its implementation with an inter-sectoral working group providing coordination between agencies. The Vietnam Business Council for Sustainable Development, led by the Vietnam Chamber of Commerce and Industry, is responsible for involving and coordinating with the business community and private sector.

The SBV is involved in orientating the banking sector towards the 2030 Agenda and Vietnam's nationalised SDGs.[192]

Regulators have sought to incorporate considerations on ESG risks into lending decisions by setting two targets by 2025, namely (i) setting up a green financial policy framework and management system and (ii) integrating environmental and social risk assessment into the credit risk assessment process.

(c) Setting Up Green Finance Policy Framework

(i) Green Bonds

The Government aims to regulate green bond issuances under the Law on Environmental Protection.

Measures have been adopted in recent years to support the development of the green bond market. These include guiding enterprises to disclose information and provide transparency on green finance activities. The mechanisms and policies for distribution of proceeds raised in the green bond market aim to facilitate issuers raising capital through the issuance of bonds to carry out green projects.[193]

At present, however, the Government has yet to lay down a comprehensive legal framework to support

[188] *Supra* note 156.
[189] Directive No. 03/CT-NHNN of SBV on promoting green credit growth and environmental - social risks management in credit granting activities (24 March 2015).
[190] Resolution 80/NQ-CP of the Government of Vietnam on sustainable poverty reduction (19 May 2011).
[191] Decision 899/QD-TTg of the Prime Minister approving the detailed plan on development and application of radiation in meteorology, hydrology, geology, mineralogy and environmental protection through 2020 (10 June 2011).
[192] Decision No. 1731/2018/QD-NHNN of SBV approving the Action Plan of the banking sector towards the 2030 agenda and Vietnam SDGs (31 August 2018).
[193] Decision No. 1191/QD-TTg of the Prime Minister approving the roadmap for the development of the bond market in 2017 – 2020 (with a vision to 2030) (14 August 2017).

green bond issuances. It remains challenging to undertake green bond issuances in the absence of clear reporting guidelines and mechanisms to apply international standard – the latter, in part, due to a dearth of independent organisations such as credit rating agencies being available to assess sustainable development indicators in these projects.

Currently, the Law on Environmental Protection only generally requires issuers to provide to investors information about environmental impact assessment and environmental licences of investment projects, as well as information on the use of proceeds raised from the issuance of green bonds. It is expected that further Government guidance would be issued to elaborate on the standards and procedures for such issuances.

(ii) Green Credit Programs

Vietnamese banks have traditionally financed large scale state-owned enterprises and conventional businesses. However, part of the reasons in setting up the green financial policy framework is to allow for greater efficiency and promulgation of green credit programs, which is among SBV's top policy priorities.[194] There is optimism that this will open the doors to funding for projects involving new technologies in innovative sectors such as sustainable finance.

Apart from green bonds, the Law on Environmental Protection regulates the giving of green credit. It will require credit institutions to comply with regulations regarding the management of environmental risks in lending activities. These regulations would be issued by the Governor of SBV.

(iii) Green and Sustainable Index

In Vietnam, a green index is combined with a sustainable index to form the Green and Sustainable Index ("**VNSI**") which tracks the performance of selected sustainable companies listed on the Ho Chi Minh City Stock Exchange (HOSE). Since its launch in 2017, the VNSI has served as an effective reference tool for investors in the sustainable finance market.

INCENTIVES AND SCHEMES

Under the recent Law on Investment 2020,[195] enterprises that produce and supply technologies, equipment, products and services to satisfy environmental protection requirements (in accordance with the law on environmental protection) will be eligible for investment incentives. Incentives will also be made available to enterprises involved in the following relevant business lines, among other things:

- production of new materials, new energy, clean energy, renewable energy;
- manufacture of energy-saving products; and
- collection, treatment, recycling or reuse of waste.

These incentives often include corporate income tax exemptions or reductions.

The Law on Environmental Protection 2020[196] also sets forth a broad foundation for the State to provide incentives and assistance for environmental protection. Entities that carry out eligible environmental protection activities will be entitled to specified incentives and assistance which will be adjusted in line with Vietnam's environmental protection policies for each period.

FUTURE INITIATIVES / REFORM

Under the Law on Environmental Protection 2020, the Government will issue further guidance on the provisions surrounding incentives for and assistance in environmental protection. As such, greater clarity on the scope of such incentives (and eligibility criteria) may be enacted in due course.

The Law on Environmental Protection 2020 also envisages:

- a roadmap for the grant of green credit and mechanisms for such grants; and
- the provision of incentives for issuers and investors of green bonds, subject to further details to be issued by the Government.

[194] *Supra* note 159.
[195] Law on Investment No. 61/2020/QH14 (17 June 2020).
[196] *Supra* note 161.

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