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The Development of Asian Bond Markets: The Offshore Option

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I. Introduction

The Asian financial crisis resulted in significant economic costs to a number of Asian countries. One of the factors widely believed to have contributed to the crisis was the dependence of the region on external short-term dollar-based financing from banks.[1] The "Asian Bond Markets Initiative (ABMI)" which was launched in Manila in 2003, aims to solve this problem by developing efficient and liquid government and corporate bond markets in Asia.[2] Better bond markets would decrease the dependence on bank financing, and allow for longer-term and local currency financing. For example, South Korean banks, rather than borrowing short-term dollars funds from foreign banks, could issue local currency bonds in Asian markets.

The creation of integrated securities markets, including bond markets, is an objective shared by other regions of the world, albeit for somewhat different objectives. An essential objective of the European Union (which now includes 27 countries) is to create a single market in services, including finance as well as goods. More recently, the U.S. and the E.U. have explored the possibility of creating a transatlantic capital market to improve the efficiency of

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[1] Atsushi Takeuchi, *Study of Impediments to Cross-border Bond Investment and Issuance in Asian Countries*, December 2005, (available at: http://asianbondsonline.adb.org/documents/ABMI_WG_FETS_Impediments_to_CrossBorder_Bond_Invesment_Issuance.pdf). See also Steven Radelet and Jeffrey D. Sachs "The East Asian Financial Crisis: Diagnosis, Remedies, Prospects," *Brookings Papers on Economic Activity*, no. 1. 1-90 (1998).

[2] *Id.*

raising capital. In both cases, a key objective is to allow for the free flow of capital (including the issuance of and payment for securities) across the borders of the countries involved. Differences in national rules make it very expensive to make simultaneous securities offerings in several countries. The offering may have to be registered in each country and different rules may apply to required disclosures and methods of distribution. At the very least, this greatly adds to costs. At the worst, conflicts between rules in different countries may make it impossible to do the offering.

There are two fundamental ways for a group of countries to create an integrated bond market—onshore and offshore.[3] Onshore integration requires that each participating country permit its issuers to raise capital by issuing bonds in foreign countries to foreign investors and to permit its investors to invest in foreign securities in their own countries. For example, in Asia, Japan would have to permit Japanese issuers (corporate and government) to issue bonds outside Japan and permit Japanese investors to freely invest in foreign bonds issued in Japan. In addition, for regional issuance to be efficient, so that issuance in all countries could take place under the same rules, all countries participating in the arrangement would have to have similar securities laws and regulations, or allow a foreign issuer to issue in their markets under its home-country rules. For example, to facilitate a South Korean corporation issuing bonds in its

[3] Hal S. Scott, "Internationalization of Primary Public Securities Markets," 63 Law and Contemporary Problems 71 (2000).

own country as well as the Philippines and Japan, all three countries would have to have the same disclosure laws—otherwise the South Korean issuer would have to comply with three different sets of rules, including the cost of translating its disclosures into three different languages. Alternatively, the Philippines and Japan could agree to allow the South Korean corporation to issue securities under South Korean rules and a common language, e.g. English. The need for harmonization—under the same rules approach—would not just extend to disclosure, but also to the means of distribution (the registration process) and to the standards and modes of enforcement. While deference to home-country rules would avoid the need for harmonization, the practical and political obstacles of allowing local investors to invest in securities subject to a significantly different securities regulation regime are quite substantial.

Offshore integration follows a different model. Countries must permit their issuers (government or corporate) to raise funds offshore from domestic and foreign investors in participating countries. For example, South Korea must permit a South Korean corporation to issue securities in Hong Kong to foreign and perhaps even South Korean investors. In addition, participating countries must permit its investors to invest in offshore securities. Thus, Japan and the People's Republic of China (PRC), for example, would have to permit its investors to freely invest in securities issued in Singapore. The offshore model does not require harmonization or deference to the use of home country rules in host countries. Harmonization, and the resulting efficiency, is achieved by issuers and investors operating under the rules of the offshore center, Singapore in the example.

A significant problem in developing offshore markets is that it could take away from the development of onshore markets, the fear being that financial intermediation among local investors and local issuers will move offshore. While countries may permit local issuers to issue securities to foreign investors offshore, they would be more concerned in allowing local investors to participate in the offshore offerings. This concern must be addressed if the offshore alternative is to be viable.

This paper argues that offshore integration is easier to achieve than onshore integration, particularly in Asia. It focuses on the primary market, the issuance of bonds, rather than the secondary market, the trading of bonds. It begins in Part II by examining the European experience with the two approaches. The E.U. has always appeared to follow the onshore approach, first by harmonization, then by deference to home country rules (mutual recognition) and most recently by returning to harmonization. However, in practice the E.U. has followed the offshore approach. There are very few pan-European securities offerings; most actually occur offshore, particularly in London. The investors have come to the issuer rather than the issuer to the investor. Part III argues that the onshore approach is particularly difficult for the ASEAN+3, due to poorly developed local markets in many countries, divergent levels of development, and significant legal and institutional differences. Part IV discusses the degree to which the current legal and policy frameworks of 8 Asian jurisdictions would permit the development of an offshore market, and suggests needed changes. These jurisdictions are: Hong Kong, Japan, the Republic of Korea, The Philippines, India, the People's Republic of China, Thailand, and Singapore. Part V concludes with a discussion of major issues that would have to be addressed if an offshore integrated market were to be created.

II. The European Experience

The size of the E.U. market is equivalent to that of the United States. The E.U.'s GDP in 2006 was $12.8 trillion compared to the U.S.'s GDP of $13.4 trillion. Before adding 10 new members in 2004 (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia), and then two more members in 2007 (Bulgaria and Romania), the 15 members of the E.U. (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom), with the exception of Greece, are at roughly at comparable stages of economic development. The per capita income of these countries (putting aside Luxembourg) ranges from $52,440 in Ireland (5th in the world) to $18, 465 in Portugal (34th in the world). These are all countries with well developed financial systems.[4] Experience with developing an integrated securities market has focused on these 15 countries. Up until 1985, the E.U. sought to integrate its markets (including financial ones) through harmonizing the laws of the member states, but this proved unsuccessful. The E.U. Commission's 1985 White Paper, *Completing the Internal Market*, identified 300 pieces of legislation that the Community would have to enact to remove restrictions or to harmonize laws of Member States, concluding this process would take too long, if it could be accomplished at all.[5]

The White Paper announced a new strategy under which the harmonization of *essential* standards would provide the basis for *mutual recognition* by the Member States of the equivalence and validity of each other's laws, regulations, and administrative practices that had not been harmonized at the E.U. level. This policy of mutual recognition for financial services was formulated at the European Union level (through the Commission, Parliament and Finance Ministers) through a series of directives, and then implemented at the member state level. Enforcement was left to the member states. Under a policy of mutual recognition, some Member States agree to offer treatment that is different and perhaps more favorable than national treatment to firms from other Member States. But such recognition is premised on minimum

[4] In contrast, in the ASEAN+3, there is a wider range of per capita incomes, ranging from Japan at $34,188 (19th in the world) to Myanmar at $230 (174th in the world), and most of the countries rank quite low in the world: PRC (108th), Indonesia (115th), Philippines (119th), Vietnam (137th), Laos (149th), Myanmar (174th), and Cambodia (152nd). The well-developed financial systems are in Japan, Hong Kong (27th) and Singapore (24th).

[5] Commission of the European Union, "Completing the Internal Market" COM (85)310.

harmonization—an agreed level of commonality is necessary for Member States to tolerate differences.

A corollary of mutual recognition is home-country control. If national laws, regulations, and supervisory practices that have not been harmonized at the E.U. level are to be accorded mutual recognition, home-country rules and supervisory practices must be accepted as controlling the terms of the cross-border provision of services, including securities offerings. However, the principle of home-country control adopted by the Community is not absolute. In accordance with judgments of the European Court of Justice and with E.U. directives, the host country retains the right to impose its own rules to the extent that doing so is necessary to protect the public interest.

The centerpiece of the E.U.'s mutual recognition regime for the offering of securities was the Public Offering Prospectus Directive (POP) adopted by the Council of Ministers in 1989.[6] POP provided for a very general system of minimum disclosure requirements and otherwise allowed securities to be distributed throughout the E.U. under the rules of the home-state of the issuer. However, Member states could impose translation requirements, and require additional information specific to its particular market, including information relating to income tax consequences.

[6] Manning Warren, "Regulatory Harmony in the European Communities: The Common Market Prospectus," 16 Brooklyn J. International L. 19 (1990).

Certain securities offerings were excluded from the coverage of POP—private placements, small offerings, minimum purchase offerings, exchange offers, employee offerings, and "Eurosecurities". The Eurosecurities exclusion was intended to prevent E.U. rules from interfering in the operations of the Eurobond market centered in London. Eurosecurities were defined as transferable securities which (1) were underwritten and distributed by a syndicate at least two of the members of which had their registered offices in different Member States; (2) were offered on a significant scale in one or more States other than that of the issuer's registered office, and (3) could be subscribed for or initially acquired only through a credit institution or other financial institution.[7]

The Directive intended to limit the solicitation for Eurosecurities to an institutional market. Thus, the exclusion is lost for securities that are distributed through "a generalized campaign of advertising or canvassing". This limitation on solicitation was implemented differently in different countries. For example, Germany provided that the "canvassing" prohibition only applied to door-to-door sales, and not apparently to calls to clients. The Netherlands, on the other hand, allowed for the solicitation of retail investors, as long as it was not done systematically by way of a general campaign. Other countries applied broader prohibitions on solicitation.

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[7] Hal S. Scott, International Finance: Law Policy, and Regulation (13th ed. 2006), at 182.

The home-country rules approach requires defining the home-country. Could a company registered in France first list on the Luxembourg exchange and then distribute its securities throughout the E.U. (including in France) under Luxembourg disclosure rules which might be less rigorous than French rules? POP provided that you must list first in the country of your registered office and then distribute securities under those rules. However, could you still forum shop by locating your registered office in whatever jurisdiction you preferred? Until quite recently, the answer to this question was clearly no because E.U. countries required firms to have their registered office in the country where the "direction" of the company came from, usually corporate headquarters. But these country requirements were invalidated to some degree in 1999 in *Centros Ltd v Erhvervs-og Selskabsstyrelsen (Centros)*.[8] Then in November 2002, the Court of Justice held that a German law refusing to recognize a Dutch company that had moved its center of administration to Germany, with the result that the company had no legal capacity and could not sue in court, was invalid under the Rome Treaty's provision of freedom of establishment.[9] Thus, freedom to choose a place of incorporation could be equivalent to freedom to choose one's home state for purposes of mutual recognition.

The E.U.'s mutual recognition system did not, however, lead to an integrated on-shore

[8] [Danish Companies Board], Case C-212/97, ECJ (March 9, 1999).

[9] Überseering BV and Nordic Constriction Company Baumanagement (NCC), Case 208/00, November 2002. See E. Wymeersch, "The Transfer of the Company's Seat in European Company Law," European Corporate Governance Institute Working Paper 08/2003 (March 2003).

securities market in the E.U. A 1998 report of the U.K. Treasury, “Public Offers of Securities”, found that there were very few cross-border securities offers in the E.U. despite the aspiration of POP. Indeed, it appeared that the 1999 Deutsche Telekom distribution was the first and last European-wide public offering. The report found the obstacles to such offers were the need to make translations of the prospectus and to include information specific to a country, such as tax effects or how to provide notification to investors (together with the cost of the legal advice to determine this). The U.K. Treasury also referred to another possible cause of the low level of pan-European distributions—the use of offshore markets.[10] As long as European investors could freely come to London to invest in the securities of European issuers, there was no need for the issuers to distribute securities in the investors’ countries.

Most countries placed no restrictions on institutional or sophisticated investors being solicited for offshore issues, and Eurosecurities, involving sales to financial institutions, were entirely outside E.U. rules. Furthermore, countries had few restrictions on the resales of Eurosecurities or privately placed securities to the retail market. Thus, one could issue securities in London under the Eurosecurities exemption to financial institutions who could resale these securities to their retail clients—the so-called “Belgian dentists.”

Most policy makers in the E.U. concluded that defects in the single-market regime of

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[10] Her Majesty’s Treasury, Public Offers of Securities (1998).

POP, rather than the availability of the offshore markets, were responsible for the absence of pan-European offerings. Thus, attention was focused on how to make such offerings more attractive. This had three principal components, strengthening the European law making process, increasing the level of country harmonization of disclosure requirements, and preventing countries from adding on their own requirements to those required by the E.U.

With respect to law-making capability, in July 2000, the European Union's Economic and Finance Ministers (ECOFIN) requested that the so-called Wise Men Committee, chaired by Alexandre Lamfalussy, recommend regulatory changes that could improve the functioning of European securities markets. This resulted in the "Final Report of The Committee of Wise Men on The Regulation of European Securities Markets" (February 15, 2001). The Report's basic recommendation was that two new regulatory bodies be created, the European Securities Regulators Committee (CESR) and the European Securities Committee (ESC), each composed of national regulators, to regulate securities markets on an E.U. wide basis. The European Parliament approved this new procedure in February 2002 subject to various "democratic safeguards." For example, all draft implementing measures of Directives, including regulations, are subject to a three month period in which Parliament can review the proposals (they review all Directives).

With respect to increased harmonization, on May 30, 2001, the European Commission issued a proposal for a new Directive on a common prospectus to be required when securities were offered to the public in primary markets or admitted for trading in secondary markets.[11] The E.U. disclosure requirements followed IOSCO's International Disclosure Standards for cross-border offerings and initial listings.[12] After making some changes from the original proposal,[13] the E.U. Finance Ministers issued a new Directive in November 2003,[14] effective July 1, 2005. The Committee of European Securities Regulators (CESR) has provided for detailed implementation. However, several countries, including Belgium and Italy, failed to implement the rules by the effective date, due to the difficulties of changing laws to conform to the new E.U. rules. In 2006, the Commission took action in the European Court of Justice to force these states to implement the measure.[15]

Enforcement of the new rules continued to be left to the Member States. When the host country finds irregularities in an offer, it must refer the matter to the home country. The host country is, however, entitled to act, after informing the home country, if measures taken by the home country prove inadequate or violations of laws and regulations persist.

The Directive only applies to public offerings, defined as "a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the

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[11] COM(2001) 280 final.
[12] International Organization of Securities Commissions, International Disclosure Standards For Cross-Border Offerings and Initial Listings by Foreign Issuers (1998).
[13] COM(2002) 460 final, August 9, 2002 (Common Prospectus Proposal or CPP).
[14] Directive 2003/71/EC of the European Parliament and of the Council, November 4, 2003.
[15] IP/06/503.

securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries." Public offering does not include sales to qualified investors such as financial institutions, professionals, or investors who buy at least €50,000 of securities. Persons may also be qualified investors if they are securities professionals, have carried out multiple significant transactions in securities, or have a portfolio in excess of €0.5 million (Art. 2(3)).

The prospectus cannot be published until approved by the home country (Art. 13(1)) of the issuer. Thus, if a Greek company were making a public offering only in London, the offering would have to be approved by Greece rather than the U.K. Once approved by the home country the same prospectus can be used throughout the E.U., a continuation of the single passport approach.

Article 15 of the Directive contains rules on advertising. Article 15(1) originally provided (Art. 13(1) of the May 2001 proposal): "Advertisements, notices, and posters shall be communicated in advance to the competent authority of the home Member State which shall check them before publication against the principles contained in this Article [that advertisements be fair, accurate and consistent with that contained in the prospectus]. The documents shall state that a prospectus will be published and indicate where investors will be able to obtain it." The requirement for pre-submission has now been dropped; however, a competent authority must have the power to monitor such advertising.

The prospectus makes significant changes in the ability to sell unregistered securities to retail investors through financial institutions. Under the Directive, sales to financial institutions would be outside the scope of the proposal since these sales would be to “qualified investors.” In a sense the “Eurosecurities” exemption has been widened by dropping the requirements for multiple state underwriters and distribution outside the state of the issuer. In the past, financial institutions could pass on these securities or resell them to retail customers, subject to member states’ restrictions on solicitations. The Directive changes this practice dramatically. While sales to financial intermediaries are exempt, resales are not unless they separately qualify for an exemption, e.g. are only to qualified investors. This means that any sales or resales of securities to the general public, whether in the issuer’s own country or offshore (within the E.U., including London), will be subject to E.U. registration and disclosure requirements.

The Directive addresses another issue that has hampered the development of an integrated securities market, the language problem. As already discussed, under POP cross-border disclosure documents had to be distributed in the local language. The new Directive provides that the prospectus shall “be drawn up in a language accepted by the competent authority in the home Member State.” But it further provides in Article 19(2): “[w]here an offer to the public is made … in one or more Member States excluding the home

Member State, the prospectus shall be drawn up in a language accepted by the … [host state] or in a language customary in the sphere of international finance, at the choice of the issuer....” The effect is to permit issuers to use English prospectuses throughout the E.U. without the need for translations. The host state may only require that the summary note be translated into its domestic language. Where an issue is made both in the home Member State and other states, then the language must be in a language accepted by the home state, and in a language accepted by each host state or in a language customary in international finance.

Another parallel change in the E.U. rules also decreases the obstacles for onshore issues—the adoption of common accounting rules. As of 2006, all E.U. issuers are required to state their accounts under International Financial Reporting Standards (IFRS). Prior to this time, securities were distributed under home-GAAP rules, many of which were unfamiliar to local investors.

While it is still early days, there is as yet little use of the Prospectus Directive for cross-border equity issues, although there have been some bond and securitized debt offerings. The few cases of cross-border offerings of equity have involved special circumstances, e.g. rights offerings to existing shareholders or to employees, or offerings in connection with a cross-border takeover. A major obstacle to increased use of E.U.-wide offerings may be the difficulty of complying with the diverse liability regimes of countries in which the offering is made.[16]

One potential reason that onshore offerings might increase under the new Directive is that offshore offerings have been made more difficult in two principal respects. First, there may be more controls on offshore issuers soliciting onshore retail investors (this largely depends on CESR implementation and country monitoring) and second, it is clearly more difficult for institutional investors to resell their securities to retail buyers (wherever located) without complying with the public offering rules.

The focus of this discussion is the regime governing the primary distribution of securities within the E.U. But it bears mentioning that these distribution rules work together with requirements for ongoing disclosure of publicly traded securities through the 2004 Transparency Directive, effective in 2006.[17]

The E.U. approach is now beginning to be explored as a model for international efforts, particularly with the possible creation of a transatlantic capital market. Ethiopis Tafara, the Director of the Office of Affairs of the SEC, has proposed that the U.S allow U.S. investors more access to trading securities registered on foreign exchanges, through permitting foreign exchanges to establish trading screens in the U.S. and permitting brokers to solicit retail orders

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[16] E. Ferran, "Cross-Border Offers of Securities in the EU: The *Standard Life* Flotation," Working Paper (December 15, 2006).

[17] Directive 2004/109/EC.

for such securities, on the condition that the foreign exchange is subject to "substituted compliance," in essence a securities regulation regime equivalent to that of the United States.[18] The G-7 has endorsed exploration of the idea.[19] SEC Commissioner Roel Compos has taken this idea further by suggesting use of the approach in the primary market.[20]

This European approach demonstrates the extensive measures that must be taken to achieve an integrated onshore system for securities offerings: (1) detailed harmonization which requires an initial measure of convergence which in turn depends on comparable levels of development in the participating countries; (2) transnational institutions to formulate and implement rules; (3) acceptance of a common language for offering documents; and (4) effective enforcement. Even after achieving these objectives, it is far from clear that an onshore market will develop in the E.U. given the lower costs of the offshore alternative.

An onshore approach requires a high degree of harmonization as shown by the European experience. The new Directive completely harmonizes E.U. disclosure requirements in comparison with the minimal disclosure approach of the earlier POP. Only with truly harmonized requirements can the benefits of a single offering document be achieved—otherwise issuers must provide for numerous local add-ons. Harmonization of securities regulation

[18] Ethiopis Tafara and Robert J. Peterson, 48 Harvard International L. J. 31 (2007).
[19] At their April 13, 2007 meeting, the G7 Finance Ministers stated: "We discussed the issue of mutual recognition of comparable regimes and look forward to further progress being made in cross-border access by investors to our securities markets."
[20] Remarks at the SEC's Open Meeting: "Foreign Private Issuer Deregistration," March 21, 2007.

among countries at substantially different levels of development may be undesirable—a regime that works in one country may not work in another. Common levels of development do exist within the E.U. and between the E.U. and North America, but not throughout Asia (as discussed more below).

The power to promulgate and mandate common rules requires states to cede authority to some transnational body. In the case of the E.U., there are established and powerful institutions to handle harmonization, e.g. the Commission, Parliament and Council of Ministers, but such institutions do not exist in either the transatlantic or Asian setting.

A very significant problem for the harmonized approach, particularly with respect to disclosure and accounting, is differential enforcement. If individual countries, as opposed to multilateral or transnational organizations, are to enforce standardized rules, the rules will be implemented differently in different countries and will not, therefore, actually be harmonized. Even within the E.U., enforcement is left to the Member States rather than the Commission, and some find this to be a crucial reason for the lack of cross-border offerings.

The mutual recognition approach, with minimum harmonization, avoids the difficulties of full harmonization but it requires host countries to accept the rules and enforcement system of a foreign jurisdiction. As discussed, this approach did not work in the E.U. It would be even less likely to work in Asia, where there is less convergence in rules among countries and no supranational institution to mandate and administer implementation.

The chart below compares various approaches to selecting rules for international securities issues.

Table 1: Rule Choices for Cross-Border Public Securities Transactions

	HARMONIZED ONSHORE	**HARMONIZED OFFSHORE**	**HOST**	**HOME**
COST	Low (same rules everywhere)	Low (same rules everywhere)	Highest (different everywhere)	Low (one country)
POLITICAL DIFFICULTY	Highest	Medium	Low	High
ENFORCEMENT DIFFICULTY	High (to insure consistency)	Low (one country)	Medium (multiple countries)	High (for host)
FLEXIBILITY	Low (one size problem)	High (multiple offshores)	Low (one size but adjustments for foreign)	Medium (some choice of home)

As Table 1 indicates, harmonized and home country rules present the greatest opportunities for lowering the costs of issuance since these approaches allow an offering to be made under one set of rules. However, the realization of either onshore harmonization or home country rules presents considerable political obstacles. In my judgment, it is politically easier to get countries to accept offshore harmonization. Offshore harmonized rules also raise the fewest enforcement issues, since the issue takes place for all investors in one market—of course, the choice of the issuing country could well be affected by the optimality of a country's enforcement system. The offshore alternative also is flexible, different countries of issue can be selected for different offerings. The prime obstacle to the offshore alternative is to remove restrictions on capital flows and solicitation and advertising in the markets of investors.

III. The Asian Bond Markets Initiative (ABMI)

The ASEAN+3 initiatives to develop the Asian Bond Markets include both the development of "local" (or "domestic") bond markets in each country and a "regional" bond market in Asia.[21] The ASEAN countries are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam, and the plus 3 are the People's Republic of China (mainland and Hong Kong), Japan and the Republic of Korea. The focus here will be on regional bond markets while recognizing that the efforts to develop the local and regional markets are complementary. As discussed in the introduction, the objective of better local and regional Asian bond markets is to reduce dependence on foreign bank loans,

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[21] The Joint Ministerial Statement of the ASEAN + 3 Finance Ministers Meeting (August 7, 2003, Makati, Philippines) says that:

"We agreed to intensify our efforts to develop regional bond markets. This will further strengthen our financial systems by better utilizing the aggregate savings in the region and minimizing the risk of maturity and currency mismatches. Voluntary working groups have been established to further discuss a range of key issues crucial to *further development of the domestic and regional bond markets*, such as, securitization, credit guarantee, promotion of local currency denominated bonds, credit rating, and foreign exchange transactions and settlement issues." (emphasis added) particularly those of short-term in foreign currencies. The paper will examine issues in implementing the ABMI in 8 different countries, the plus 3—People's Republic of China (with separate treatment of Hong Kong), Japan and Korea, three of the ASEAN countries—the Philippines and Singapore and Thailand, and one important non-ASEAN Asian country, India.

A. Some Basic Characteristics of the Asian Bond Markets

Tables 2 and 3 below, provide data about the size and composition of the bond markets of the countries that are examined in this paper, other than India. These tables show a very different pattern of development in these eight jurisdictions. First, while government bond markets generally dominate corporate ones in some countries, PRC, the Philippines, Singapore and Japan, the opposite is true in Hong Kong, Korea and Thailand. Second, the overall growth rates of the bond markets diverge significantly, from 21% in the People's Republic of China in the first half of 2006 to a negative 5.05% in the Philippines during the same period. While the growth of the government markets reflect different fiscal policies, see the negative growth rate in Japan of 3.59% in the government bond market in 2005, the growth rates in the corporate market may be more related to stage of development of the markets, for example the extraordinarily high growth rate in the Philippines bond market in 2004 and in the first half of 2006 reflects a low starting point. In Table 3, we see significant differences in the overall size of the bond markets as a percentage of GDP as of 2006, ranging from a high in Japan of 158.98% to a low of 15.21 in

Indonesia, and similar significant variations in the government bond markets, from a high in Japan of 143.14% to a low in Hong Kong of 8.98%, and corporate bond markets, from a high in Korea of 55.84% to a low in the Philippines of 0.33%.

Table 2: **Size and Composition of Emerging East Asian Local Currency Bond Markets**

	2004		2005		2006		Growth Rate (%)	
	Amount		Amount		Amount		2005	2006
	($ billion)	% share	($ billion)	% share	($ billion)	% share		
China, People's Rep. of								
Total	623.76	100.00	895.54	100.00	1,350.60	100.00	43.573	50.81
Government	433.57	69.51	610.67	68.19	877.89	65.00	40.846	43.76
Corporate	190.18	30.49	284.87	31.81	472.70	35.00	49.788	65.94
Hong Kong, China								
Total	78.21	100.00	85.59	100.00	96.19	100.00	9.44	12.38
Government	15.77	20.16	16.34	19.09	16.94	17.62	3.61	3.70
Corporate	62.44	79.84	69.25	80.91	79.25	82.38	10.91	14.43
Korea, Rep. of								
Total	708.59	100.00	804.60	100.00	958.97	100.00	13.55	19.19
Government	337.18	47.58	404.14	50.23	469.13	48.92	19.86	16.08
Corporate	371.42	52.42	400.45	49.77	489.84	51.08	7.82	22.32
Philippines								
Total	35.32	100.00	40.53	100.00	43.88	100.00	14.74	8.27
Government	35.05	99.22	40.20	99.20	43.50	99.13	14.71	8.20
Corporate	0.28	0.78	0.32	0.80	0.38	0.87	17.56	17.71
Singapore								
Total	79.98	100.00	83.10	100.00	99.18	100.00	3.91	19.35
Government	44.25	55.33	46.90	56.44	55.92	56.38	6.00	19.23
Corporate	35.73	44.67	36.20	43.56	43.26	43.62	1.32	19.50
Thailand								
Total	66.65	100.00	78.84	100.00	112.01	100.00	18.28	42.08
Government	44.36	66.55	54.29	68.86	74.58	66.58	22.38	37.38
Corporate	22.29	33.45	24.55	31.14	37.44	33.42	10.13	52.47
Japan								
Total	7,447.42	100.00	7,046.41	100.00	7,096.10	100.00	(5.38)	0.71
Government	6,556.28	88.03	6,302.54	89.44	6,389.17	90.04	(3.87)	1.37
Corporate	891.14	11.97	743.87	10.56	706.93	9.96	(16.53)	(4.97)

Notes: Corporate bonds include issues by financial institutions.
Sources: ADB Asia Bond Monitor (April 2007)

Table 3: **Size and Composition of Emerging East Asian Local Currency Bond Markets** (% of GDP)

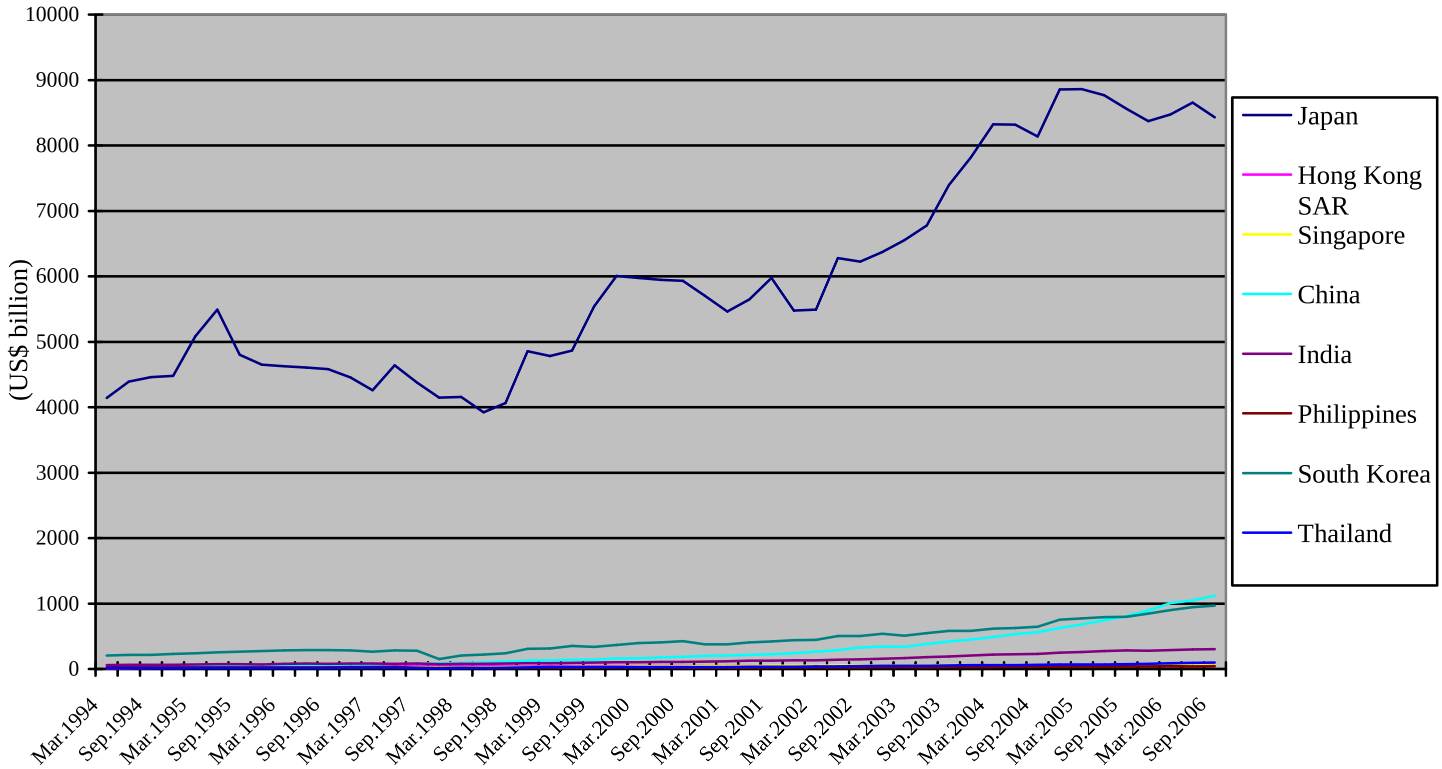
	Amount		
	2004	**2005**	**2006**
China, People's Rep. of			
Total	32.29	40.08	52.88
Government	22.45	27.33	34.37
Corporate	9.85	12.75	18.51
Hong Kong, China			
Total	47.16	48.17	50.98
Government	9.51	9.20	8.98
Corporate	37.65	38.97	42.00
Indonesia			
Total	19.42	16.55	15.21
Government	16.93	14.46	13.26
Corporate	2.49	2.09	1.95
Korea, Rep. of			
Total	104.21	102.16	109.32
Government	49.59	51.32	53.48
Corporate	54.62	50.85	55.84
Philippines			
Total	40.74	41.20	37.53
Government	40.42	40.87	37.20
Corporate	0.32	0.33	0.33
Singapore			
Total	74.40	71.16	74.28
Government	41.16	40.17	41.88
Corporate	33.24	31.00	32.40
Thailand			
Total	41.22	45.54	57.57
Government	27.44	31.36	38.33
Corporate	13.79	14.18	19.24
Japan			
Total	162.35	154.27	158.98
Government	142.93	137.99	143.14
Corporate	9.43	16.29	15.84

Note:
1. Corporate bonds include issues by financial institutions.
2. Since Japan is not included in the table of the Asia Bond Monitor, the Japanese data is from IMF World Economic and Financial Surveys, World Economic Outlook Database (September 2006 Edition) and the amount of local currency bonds from Table 2 above.

Sources: ADB Asia Bond Monitor (April 2007)

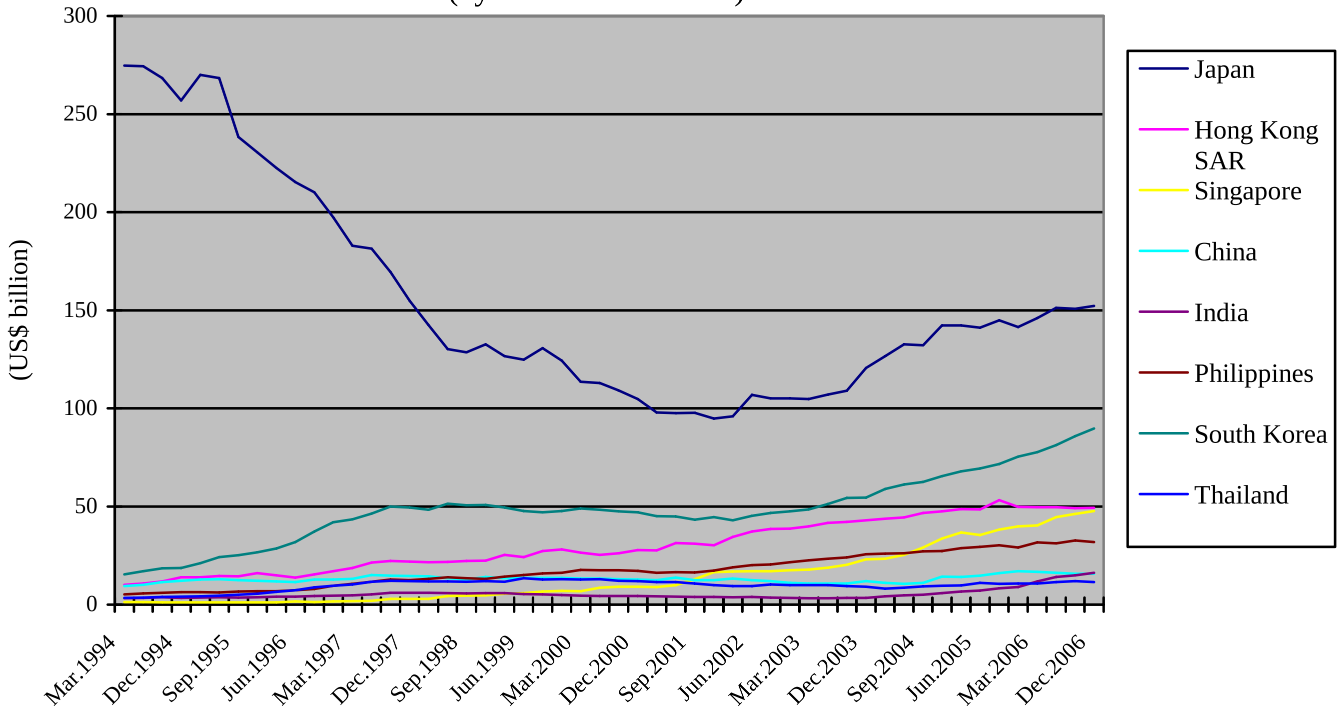
Chart 1 below shows the outstanding amounts of all domestic debt securities (securities which are issued in domestic currency and targeted at resident investors) from 1994-2006 (September) while Chart 2 below shows the outstanding amounts of international debt securities (securities which are issued in domestic currency and targeted at non-resident investors and securities which are issued in foreign currency) issued over the same time. Again there are great disparities. Japan has the largest local and international bond markets. Apart from Japan, the People's Republic of China and Korea have the largest aggregate local bond markets, around $1 trillion each, with India at $300 billion and the other countries under $200 billion. However, with respect to international debt securities, Korea leads with $85 billion followed by Hong Kong at $50. The People's Republic of China and India, countries with exchange controls, are both under $20 billion.

Chart 1: **Outstanding Amount of Domestic Debt Securities by Asian Issuers**
(by residence of issuer)



Source: Bank for International Settlement International Financial Statistics (Table 16A)
Note: According to the Guide to International Financial Statistics, domestic securities are securities which are issued in domestic currency and targeted at resident investors.

Chart 2: **Outstanding Amount of International Debt Securities by Asian Issuers**
(by residence of issuer)



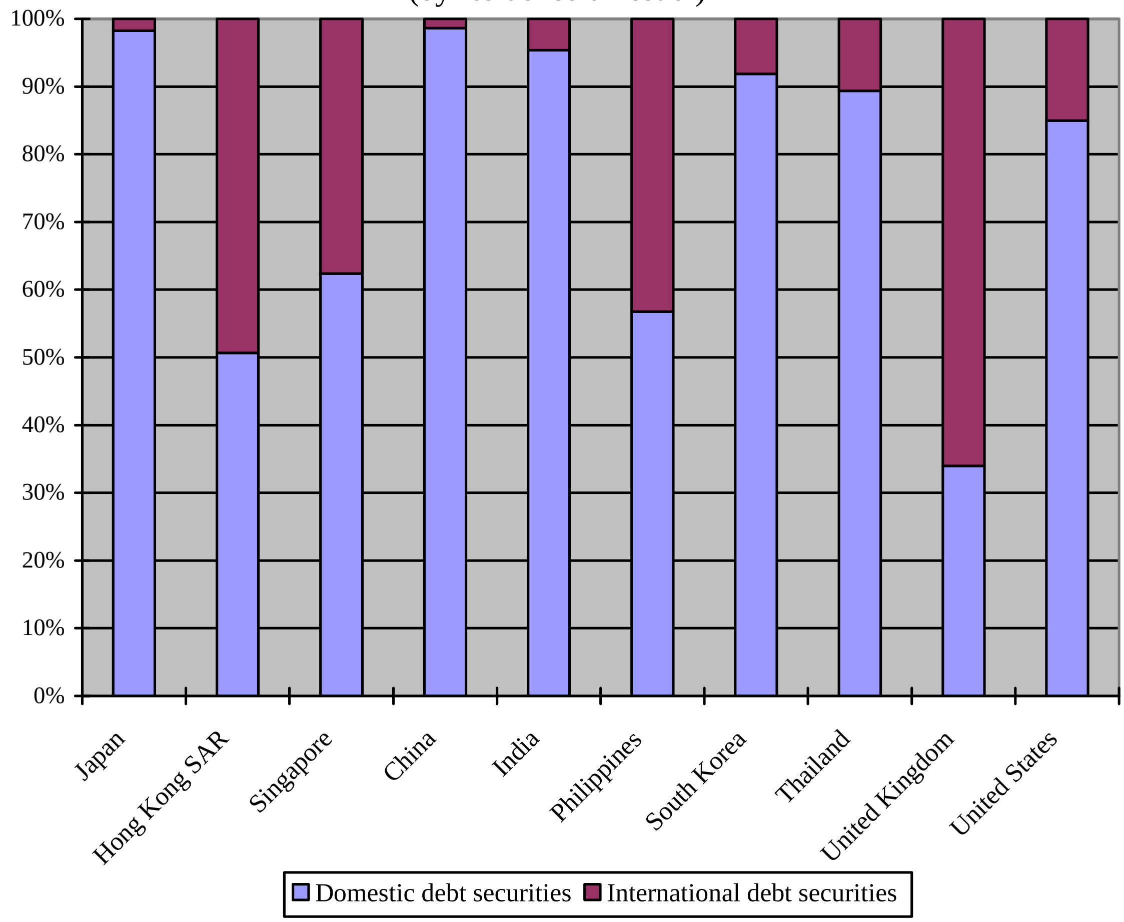
Source: Bank for International Settlement, International Financial Statistics (Table 11)
Note: According to the Guide to International Financial statistics, international securities are securities which are issued in domestic currency and targeted at non-resident investors and securities which are issued in foreign currency.

Table 4 below shows the relative importance of domestic and international debt to particular countries. By this measure, Singapore, the Philippines and Hong Kong are the most international. This probably reflects the Philippines' high dependence on external sovereign debt, and the financial center status of Singapore and Hong Kong, i.e. that different corporate issuers issue debt offshore through these centers. The comparison with the U.K. shows the roles of the U.K. as an international center, with an even greater percentage of international issues than Singapore or Hong Kong. The U.S., on the other hand, is dominated by its local debt markets. Chart 3 gives a graphic picture of the same points.

Table 4: Domestic Debt Securities/Total debt Securities (%)	
Japan	98.2
Hong Kong SAR	50.6
Singapore	62.4
China, People's Rep. of	98.6
India	95.4
Philippines	56.8
South Korea	91.9
Thailand	89.4
United Kingdom	34.0
United States	85.0

Source: Bank for International Settlement International Financial Statistics (Table 11, 16A)

Chart 3: **Composition of Outstanding Debt Securities issued by Asian Countries (%) September 2006**
(by residence of issuer)



Source: Bank for International Settlement, International Financial Statistics
Note: For the definition of domestic and international securities, see the notes to Charts 1 and 2.

Table 5 below gives another dimension of internationalization, the degree to which foreign investors invest in local bond markets. In 2004, in terms of total investment, Japan with the largest market, and one open to foreign investment, leads the way in 2004 with $286 billion, with Thailand and India on the other end of the spectrum, with $4.4 and $5.9 billion, respectively. Takeuchi shows that in 2001-2001, foreign investor participation was a negligible percentage of total debt outstanding.[22]

Table 5. Total portfolio Assets Investment to Asia (Debt Securities)
(US$ million)

	Investment from World		
Investment to Portfolio Investment Assets (Debt Securities)	**2002**	**2003**	**2004**
Thailand	3,343	4,604	4,446
Singapore	10,355	13,166	19,060
Philippines	8,532	12,862	12,832
PRC	6,296	7,137	11,236
Republic of Korea	28,420	27,619	38,575
Japan	199,407	230,365	286,831
Indonesia	3,118	5,286	6,234
India	1,310	2,404	5,878
Hong Kong, China (PRC)	7,848	10,279	15,875

Source: IMF Coordinated Portfolio Investment Survey
*Integration Indicators Databa*se of Asia Regional Integration Center (ADB)
Note: Portfolio investment assets are the holdings of portfolio debt securities issued by non-residents reported by the 71 countries participating in the IMF Coordinated Portfolio Investment Survey.

Table 6 below shows, as of 2004, the extent to which investors in one Asian country invest in debt securities issued by other Asian countries. Hong Kong, Singapore, Thailand, Philippines, and Japan invest the biggest amount in portfolio investment assets (debt securities)

[22] Atsushi Takeuchi, "Identifying Impediments to Cross-Border Bond Investment and Issuance in Asian Countries," BIS Paper No. 30 (2007). Atsushi Takeuchi was the Director and Head of the International Financial Cooperation Section, International Department, Bank of Japan.

issued by Korea, as compared to other Asian countries, although the total amount of portfolio investment assets issued by Japan is considerably larger than those issued by Korea. It is apparent that Korean issuers of debt securities are more dependent on Asian investors compared to issuers in Japan. Table 6 also shows, however, the low level of cross-Asian portfolio investment of countries like India and the People's Republic of China that have strong exchange controls.

Table 6: Asian Investors' Portfolio Investment In Debt Securities Issued by Asian Countries (Outstanding Amount, 2004, US$ million)

		Investment from						
		Hong Kong	**Japan**	**Korea**	**Philippines**	**Singapore**	**Thailand**	**World(1)**
Portfolio Investment Assets (Debt Securities) issued by	**Thailand**	690	710	24	0	894		4,446
	Singapore	4,572	1,627	295	11		0	19,060
	Philippines	768	1,237	37		593	0	12,832
	PRC	5,430	529	69	0	483	5	11,236
	Korea	8,812	5,273		52	4,191	37	38,575
	Japan	5,592		495	0	3,397	0	286,831
	India	1,313	176	29		1,026	0	5,878
	Hong Kong		575	177	62	2,636	5	15,875
	ASEAN+3	29,648	10,636	1,158	100	25,569	52	412,279
	World(2)	201,192	1,644,980	19,359	4,366	123,037	931	14,532,200

Source: IMF Coordinated Portfolio Investment Survey
*Integration Indicators Databa*se of Asia Regional Integration Center (ADB)
Note: Portfolio investment assets (Debt Securities) are the holdings of portfolio debt securities issued by non-residents reported by countries participating in the IMF Coordinated Portfolio Investment Survey. The data of the portfolio investment assets held by India and PRC are not available. World(2) includes all countries in the world.

Overall, the foregoing analysis shows that some countries like India and the People's Republic of China have fairly well developed domestic bond markets, albeit dominated by the government, while others have important international markets, like Singapore, Hong Kong and Korea. Thus, both the development of onshore and offshore markets pose different challenges to different countries.

B. Different Approaches to Developing an Asian Bond Market

ASEAN+3 have been primarily trying to achieve the creation of a regional onshore bond market through harmonization. According to the "Progress Report of the Asian Bond Markets Initiative" issued in November 2006, the ASEAN+3 countries, in addition to making efforts to create an environment for bond market development in their own countries, have conducted regular dialogues and discussions among themselves as well as with academics and market participants aiming at building a harmonized or integrated regional bond market.

We have already discussed the problems the European Union is experiencing in harmonizing its bond markets and noted that this would be even more difficult to do in Asia because Asia lacks the E.U. political structure, and convergence in levels of development and laws. Under the Asian Bond Markets Initiative, the Bank of Japan, together with Bank Negara Malaysia, conducted a survey of impediments to cross-border bond transactions, as a part of the work done by the Working Group on foreign currency transaction and settlement issues.[23] Atsushi Takeuchi,[24] "Study of Impediments to Cross-border Bond Investment and Issuance in Asian Countries (December 2005)," finds significant impediments to cross-border bond transactions for inward (local) bond investment by non-residents, including capital controls, taxation, lack of regulatory transparency, non-availability of hedging instruments, inadequate clearing and settlement, and weaknesses in investor protection and disclosure. While many markets do have problems, others such as Japan, Hong Kong and Singapore do not. Thus, for local issues in these markets, impediments would be low. Takeuchi also finds significant impediments to the issuance of bonds by non-residents in some domestic markets. But these impediments could be avoided if bonds were not issued in those markets.

Takeuchi has as a premise that the development of bond markets should be promoted by encouraging the participation of foreign investors and issuers in each Asian local bond market. Foreign investors would invest in local bond issues, and foreign issuers would issue securities in each local market. Based on this premise, it is important to take away impediments for foreign investors to access every Asian local bond market. In addition, it is important to take away impediments for issuers to issue securities in every Asian local bond market. Under the offshore approach, removal of such impediments is not important. In the offshore approach,

[23] This is the current Working Group 3.
[24] This paper was prepared for discussion at the working group under the ASEAN+3 Asian Bond Market Initiatives.

issuers will choose the most accessible bond markets, generally the most well developed ones, and solicit investors from throughout Asia to buy their securities there. However, the development of local bond markets (not the focus of this paper) would be facilitated by increasing the access of foreign investors to these markets.

The development of harmonized rules for an onshore wholesale bond market is an alternative approach. At the ASEAN+3 Finance Ministers Meeting on May 4, 2005, the ASEAN+3 Finance Ministers agreed to pursue a study of "Asian Bond Standards," initially proposed by the Republic of Korea, within the context of the Asian Bond Markets Initiative.

The concept paper of the Asian Bond Standard[25] explains the approach as follows: "An ideal way to develop regional bond markets is to develop each country's domestic bond market, open the market to foreign investors and issuers, and harmonize each country's bond market regulation. In reality, however, it will take a long time to develop and link local bond markets in Asia, let alone harmonize regulations because there is a wide difference among East Asian countries in terms of market development, regulation, and infrastructure."

The "Asian Bond Standards" would permit so-called "Asian Bonds" to be issued to wholesale investors in participating countries without registration in those countries. To facilitate the wholesale issue, participating countries would harmonize standards relating to such

[25] Available at the Asian Bonds Online Website http://asianbondsonline.adb.org/documents/Asian_Bonds_Standard_2005_May.pdf

issues, including issuing procedure, governing law, and settlement procedures. Table 7 below shows the type of harmonization envisioned to be necessary.

Table 7: Asian Bond Roadmap

Category	Present	Medium-term	Long-term
Issuing Procedure	International Primary Market Association (IPMA)	Harmonization by an Asian self-regulatory organization	Harmonization by legal enforcement
Governing Law	English law	English law or Asian country law	Asian country law
Settlement	Euroclear, Clearstream	Regional Central Securities Depository (RCSD)	RCSD
Listing and Disclosure	Securities exchange (Mostly LSE, Lux)	Asian securities exchanges	Asian securities exchanges
International Securities Identification Number	Securities exchange, International Central Securities Depository	Securities exchange, RCSD	Securities exchange, RCSD
Electronic Disclosure	Introduced by each country	Harmonization of regulations	Harmonization of regulations
Documentation	Use Eurobond (IPMA) form	Develop Asian bond form	Use Asian bond form
Syndicate rule	Eurobond syndicate (IPMA)	Asian IPMA rule	Asian IPMA rule
Secondary transaction	International Securities Market Association (ISMA)	Asian ISMA rule	Asian ISMA rule
Accounting Standard	Decided by bond issued country	Harmonization of some accounting standards	Harmonization of accounting standards
Credit Rating	Up to the underwriter/issuer (one or two)	Up to the underwriter/issuer (Including regional credit rating mechanism)	Up to the underwriter/issuer (Including regional credit rating mechanism)

Source: “Asian Bond Standards” Table 2

The Asia Bond standard seems to envision an offshore market but wrongly assumes the necessity for harmonization.[26] In a truly offshore market there is no need to have harmonization of such matters as a common issuing procedure, a specific governing law, disclosure standards, or settlement procedures. All of these matters can be specified by the offshore market, or by the issuer itself to the extent the offshore market has no regulation of the matter. There is no need for "Asian" rules. This and other studies wrongly assume that settlement procedures must be worked out among participating markets. If a Korean issuer issues securities in Hong Kong, the securities can be settled through the method that securities are issued in Hong Kong, e.g. a local CSD or an international system like Euroclear. Japanese investors in such securities can link into a Hong Kong CSD or an international clearer through a custodial bank that already participates in these systems.

International institutions and foreign institutions have issued local-currency denominated bonds in several Asian markets to promote the Asian Bond Markets Initiative. As of November 2006, there were the following issues: (1) Asian Development Bank issued local currency bonds in India (2004), Thailand (September 2005), the People's Republic of China and the Philippines (October 2005 respectively), and Malaysia (April 2006); (2) World Bank issued local

[26] The same mistaken assumption is found in National Institute for Research Advancement (NIRA), "Proposal for the Establishment of An Asian International Bond (Asian Bond) Market," May 15, 2006.

currency-denominated bonds in Malaysia (April 2005); (3) International Finance Corporation issued local currency-denominated bonds in Malaysia (December 2004) and the People's Republic of China (October 2005); and (4) the Japan Bank for International Cooperation (JBIC) issued local currency-denominated bonds in Thailand (September 2005); JBIC started providing a partial credit guarantee for the issuance of baht-denominated bonds by Japanese subsidiaries in Thailand (June 2004) and in Malaysia (January 2005).

In addition, the Asian Development Bank (ADB) launched a $10 billion Asian Currency Note Programme in September 2006 under a common set of documents under English law. Under the Programme, notes of various maturities in local currencies were to be issued in various markets to wholesale investors. In fact, there have been four issues under the Programme. Two issues were denominated in Singapore dollars (a total of SGD 550 million, or USD 352.59 million), and two issues in Hong Kong dollars (a total of HKD 2.5 billion or USD 320.82 million). All four of the issues were launched through announcement on wire services but no solicitations were made in local markets or through local advertising. This Programme would seem to follow an offshore model in which bonds were issued in local currencies by the ADB in Philippines, and the investors came to the issuer to buy the bonds. No advertisement, solicitation or distribution was done in local markets, and the differences in infrastructure and law in those local markets was irrelevant to the issue.

We turn now to an examination of impediments to the development of offshore markets with respect to the eight jurisdictions examined in this study.

IV. Impediments To an Offshore Asian Bond Market

An offshore Asian bond market requires each Asian participating country to permit its investors to invest and its issuers to issue outside the country. In addition, a participating country must permit offshore issuers and brokers to solicit local investors for the offshore issue. While investors (particularly institutions) may find and decide to invest in these issues on their own, the same is much less true for retail investors. This section explains how the following Asian counties currently approach these matters: Hong Kong, Japan, Korea, the Philippines, Singapore, India, Peoples Republic of the People's Republic of China and Thailand.[27]

Hong Kong

1. Restrictions on investment and issuance outside Hong Kong

Hong Kong has no capital controls, thus Hong Kong investors can freely buy securities issued outside Hong Kong and Hong Kong issuers can freely issue securities outside Hong Kong.

2. Restrictions on solicitation or advertisement of investors in Hong Kong by offshore issuers

The Company Ordinance (Chapter 32 of the Law of Hong Kong) and the Securities and Futures Ordinance (Chapter 571 of the laws of Hong Kong) regulate these activities.

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[27] The analysis in this section is based on memoranda received from four different law firms, on file with author.

The Company Ordinance regulates the issue, circulation and distribution in Hong Kong of any document (a “prospectus”) that offers to the public in Hong Kong for subscription or purchase, any shares or debentures of a company incorporated in or outside of Hong Kong. A prospectus must comply with the contents requirements of the Company Ordinance and must be registered with the Companies Registry in Hong Kong before it is permitted to be issued, circulated or distributed.

The Company Ordinance applies whether the securities are issued in or outside Hong Kong if there is a circulation and distribution of offering documents in Hong Kong, even if the issuer and the issue is outside of Hong Kong. However, it would appear that offerings outside Hong Kong with no offering in Hong Kong are not restricted by the Company Ordinance.

The Securities and Futures Ordinance imposes licensing requirements for dealing in securities and other regulated activities, as well as regulates other offering documents such as advertisements, invitations or document in regard of offering of securities. Section 103 of the Securities and Futures Ordinance regulates the solicitation or advertisement by offshore issuers. It provides that it will be an offence if a person issues, or has in his possession for the purpose of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to the Hong Kong public, inter alia to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities[28] unless the offering materials are authorized under the Securities and Futures Ordinance or unless other exemptions apply.

The term "advertisement" is broadly defined and includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means.

Restrictions on advertising offshore issues in Hong Kong clearly apply whether or not the advertisement actually occurs in Hong Kong. Section 103 of the Securities and Futures Ordinance provides that it will be an offence if a person issues, or has in his possession for the purpose of issue, "*whether in Hong Kong or elsewhere*, an advertisement, invitation or document which to his knowledge is or contains an invitation to the Hong Kong public, … unless the offering materials are authorized under the Securities and Futures Ordinance…." This provision regulates any advertisement activities not only conducted inside Hong Kong but also conducted anywhere in the world as long as these advertisements are to the Hong Kong public.

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[28] The term "securities" is broadly defined in the Securities and Futures Ordinance to include:

(a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, any incorporated or unincorporated body or government or municipal government authority;
(b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
(c) certificates of interest or participation in, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
(d) interests in any collective investment scheme; and
(e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities.

3. Exemptions

There are exemptions from the prospectus requirements under the Company Ordinance and the prohibitions under the Securities and Futures Ordinance. The exemptions that are commonly used by offerors of shares and debentures are the following.

(a) Offers to "professional investors," including licensed or registered intermediaries, funds, banks, insurance companies, as well as high net worth persons.[29]

(b) Offers to not more than 50 offerees, where the offering materials contain a cautionary statement specified in the Company Ordinance.

(c) Offers where the minimum principal amount is not less than HK$500,000 (or its equivalent in another currency) and the offering materials contain a cautionary statement specified in the Company Ordinance.

(d) A de minimis total offer, where the total offer is less than HK$5,000,000 (or its equivalent in another currency), and the offering materials contain a cautionary statement

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[29] The categories of high net worth persons are set out in the Securities and Futures (Professional Investor) Rules as follows:

1. any trust corporation having been entrusted under the trust or trusts of which it acts as a trustee with total assets of not less than HK$40 million (or its equivalent in any foreign currency);

2. any individual (either alone or with his/her spouse and/or children on a joint account) having a portfolio, comprised of securities, certificates of deposit and money held with custodians, of not less than HK$8 million (or its equivalent in any foreign currency), or any corporation wholly-owned by such individual the sole business of which is to hold investments; or

3. any corporation or partnership having a portfolio, comprised of securities, certificates of deposit and money held with custodians, of not less than HK$ 8 million (or its equivalent in any foreign currency) or total assets of not less than HK$ 40 million (or its equivalent in any foreign currency).

specified in the Company Ordinance.

It is possible to combine the "professional investors" exemption and the "limited number of offerees" exemption, such that the offer can be made to any number of professional investors and not more than 50 non-financial investors.

To the extent that the securities do not take the form of shares and debentures (certain types of bonds may not be debentures),[30] it is not possible to combine the "professional investors" exceptions and the "private placement offering" exception.

Japan

1. Restrictions on investment and issuance outside Japan

Japan has no capital controls, thus Japanese investors can freely buy securities issued outside Japan and Japanese issuers can freely issue securities outside Japan. However, Japanese residents must report the purchase of securities from a non-resident under the Foreign Exchange and the Foreign Trade Law.[31] These laws also require Japanese issuers to report the issuance of securities outside Japan.[32]

2. Restrictions on solicitation or advertisement of investors in Japan by offshore issuers

Under the Securities and Exchange Law, solicitation and advertisement of a "public

[30] e.g., if they are limited partnership interests or units in a unit trust.

[31] Under the Foreign Exchange and Foreign Trade Law, when residents in Japan buy securities from non-residents, they must submit a report to the Finance Minister (through Bank of Japan) within 20 days after the transaction. However, if the total amount of securities is not more than ¥100 million, there is no such reporting obligation. Also if residents in Japan sell securities to non-residents, they must submit a report to the Finance Minister within 20days after the transaction.

[32] Under the Foreign Exchange and Foreign Trade Law, when residents in Japan issue securities outside Japan, they have to report it to the Finance Minister within 20 days after the transaction. If the total amount is less than ¥1000 million, there is no such reporting obligation.

offering" of securities in Japan by offshore issuers is prohibited unless the securities are registered.

The Securities and Exchange Law[33] regulates the solicitation or advertisement of securities by offshore issuers to Japanese investors, in connection with the "public offering" of these securities in Japan, regardless of whether the securities are issued inside or outside Japan.

Such activities in connection with a "public sale"[34] are prohibited unless the offering is registered.

3. Exemptions

Under the Securities and Exchange Law, there are certain exemptions from registration requirements for securities sold within Japan:

(a) If the offer is to less than 50 investors in any 6 months and there is little possibility that these securities might be resold to the public, there is no need to register. In calculating the numbers of investors, the number of qualified institutional investors is included. However, if the number of qualified institutional investors is not more than 250 and the sale is conducted on condition that these institutional investors will not resell these securities to investors other than qualified institutional investors, then the number of

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[33] On 7 June 2006, the Financial Instruments and Exchange law amended the Securities and Exchange Law and other financial laws. The regulation as to the activities described herein did not change under the Financial Instruments and Exchange law.

[34] Under the Securities and Exchange Law, there are two categories of offerings which require the issuer to register. One is a "primary" offering of securities to 50 or more investors. Another is a "secondary" offering of already-issued securities at the same sale-condition (e.g. same price) to 50 or more investors. The former is a "public offering" and the latter a "public sale."

qualified institutional investors is excluded from the calculation.

(b) If the offer is made only to qualified institutional investors[35] and there is little possibility that these securities might be resold to investors other than qualified institutional investors, there is no need to register.

(c) If the total amount of the securities offered within 12 months is less than ￥100 million, there is no need to register.

The Republic of Korea

1. Restrictions on investment and issuance outside Korea

Under the Foreign Exchange Transaction Regulation in Korea, investors are classified into two categories, institutional and non-institutional. Institutional include (i) banks, (ii) merchant banks, (iii) securities companies, (iv) insurance companies, (v) asset management companies, and (vi) investment companies. The Foreign Exchange Transaction Regulation

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[35] Qualified Institutional investors includes, inter alia:

1. securities companies (including branches of foreign securities companies)
2. investment trust funds (including foreign investment trust funds)
3. banks
4. insurance companies (including foreign insurance companies)
5. cooperative banks and labor banks
6. Norinchukin Bank and Shoko Chukin Bank
7. credit cooperative association and credit federation of agricultural cooperatives
8. licensed investment advisory business
9. Japan Post
10. Ministry of Finance
11. Government Pension Investment Fund
12. Japan Bank for International Cooperation
13. Development Bank of Japan
14. those business companies which are submitting annual financial statement reports and own more than ¥ 10 billion securities on their financial statements for the previous two years. These companies need to notify to the Financial Services Agency to be qualified as qualified institutional investors.

In 2003, the scope of the qualified institutional investors was expanded to include, inter alia, venture capitalists and pension funds.. There is no category of a high net worth individual.

appears not to restrict offshore purchases by Korean institutional investors. On the other hand, non-institutional investors[36] can only purchase or sell foreign securities (whether onshore or offshore) through Korean domestic securities companies[37] and must file a report with and obtain the acceptance of purchases from the Bank of Korea.

In addition, the securities company which acts as a broker for non-institutional investors must deposit the foreign securities purchased on behalf of its customers with a foreign custodian designated by the Korea Securities Depository. Subsequent purchaser of the foreign securities in Korea (but not outside Korea) will be subject to the same restrictions.

When a Korean issuer wants to issue securities outside Korea, it must submit a prior report to its designated foreign exchange bank. If the amount of the issuance is more than U.S. $30 million, the report must be submitted to the Ministry of Finance and Economy through its designated foreign exchange bank.

2. Restrictions on solicitation or advertisement of investors in Korea by offshore issuers

Under the Securities and Exchange Law, solicitation and advertisement of a "public offering" of securities in Korea by offshore issuers is prohibited unless the securities are registered.

3. Exemptions

However, offers to certain accredited investors (including institutional investors) or offers

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[36] i.e., individual investors and non-institutional corporate investors
[37] including domestic branches of foreign securities companies

to fewer than 50 investors, are exempt from registration, and restrictions on solicitation and advertisement.

The Philippines

1. Restrictions on investment and issuance outside the Philippines

Philippine investors can freely invest in securities issued outside the Philippines. However, if the foreign exchange to be used by the Philippine investor in making the investment is purchased by such investor from banks within the Philippines, the investor cannot purchase more than U.S. $6,000,000 from those banks per year without the prior approval of the Philippine Central Bank. If the investor is obtaining foreign exchange from outside the Philippines to make investments, these requirements do not apply.

Philippine issuers can freely issued securities outside Philippines without any restrictions.

2. Restrictions on solicitation or advertisement of investors in the Philippines by offshore issuers

Any solicitation or advertisement in the Philippines of securities, whether issued onshore or offshore, would be presumed to be a public offering of such securities and would require registration under the Securities Regulation Code of the Philippines.

3. Exemptions

Offers to qualified buyers or to fewer than 19 investors, are exempt from registration, and restrictions on solicitation and advertisement.

India

1. Restrictions on investment and issuance outside India[38]

Overseas investments by Indian entities are regulated by capital controls and foreign exchange policies.

Indian individuals and corporations can invest in foreign securities up to an aggregate amount of US$ 100,000 in any financial year. Indian mutual funds are allowed to invest a certain percentage of the assets under their management, in overseas securities.

Indian capital controls and foreign exchange policy also regulates the issuance of securities by Indian issuers outside India. Different rules are applied depending on whether the securities to be issued are foreign-currency denominated or Indian Rupee (INR) denominated securities. I will only focus on the issuance of foreign-currency denominated securities.

Only listed companies in India may issue foreign currency denominated equity (through depositary receipts) or foreign currency denominated debt outside India. Debt is subject to certain restrictions: (1) eligibility of the issuer; (2) minimum maturity for redemption of debt (iii) maximum returns (iv) end use restrictions.

There are no restrictions on reselling foreign issued securities inside India as long as the buyer is eligible under the foreign exchange limitation described above. There is no restriction

[38] In India, different rules are applied depending on whether the investment is foreign direct investment or portfolio investment. The focus here is on portfolio investment.

on reselling securities outside India as long as the securities are bought as portfolio investment.

2. Restrictions on solicitation or advertisement of investors in India by offshore issuers

There is no restriction on foreign issuers advertising or soliciting in India securities issued outside India. However, since the universe of Indian investors is limited by the foreign exchange regulations, nobody has found it practicable to advertise or solicit sales.[39]

People's Republic of China (PRC)

1. Restrictions on investment and issuance outside the People's Republic of China

The PRC has a foreign exchange control regime which limits the ability of Chinese residents to engage in offshore financial activities. According to the *Administrative Regulations on Foreign Exchange,* all domestic institutions, individuals, as well as foreign institutions and foreigners situated inside of the PRC, are subject to regulation when their activities or operations involve foreign exchange. In particular, foreign exchange transactions under the capital account, including payments into or outside of the People's Republic of China, are regulated by the State Administration of Foreign Exchange.

One important exception applies to qualified domestic institutional investors (QDIIs), including banks, fund management and insurance companies.[40] QDIIs, with The State Administration of Foreign Exchange's approval, are allowed to invest, within allocated quotas,

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[39] In the recent past, several brokerage firms in India (domestic and foreign) have initiated retail marketing of foreign securities to Indians pursuant to the $100,000 USD limit.

[40] The qualifications and activities of these institutions are regulated by the State Administration of Foreign Exchange and their respective regulators, including the banking authority, the China Securities Regulatory Commission, and the insurance regulatory authority. This QDII scheme was launched in April 2006.

for themselves or their customers, in certain overseas financial products, such as fixed income instruments and stock. When making investments outside of the PRC, the PRC investors must observe *the Regulation on Foreign Exchange Administration of Overseas Investment*, which requires proof of the source and legality of the foreign exchange used for investment. In May 2006, China further liberalized its regime to allow individual investors to invest through Chinese banks in foreign equity funds authorized by certain overseas regulators, at first the Securities and Futures Commission of Hong Kong.

The issuance of securities outside PRC is also restricted under the foreign exchange policy. According to the *Administrative Regulation on Foreign Exchange*, when a PRC company plans to offer and sell securities outside the PRC, approval of the State Administration of Foreign Exchange is required and foreign exchange regulations apply. In particular, the proceeds from a securities offering, after the deduction of costs, must be repatriated to the PRC within a specified time and converted to Renminbi. Further, the aggregate amount of foreign currency debt incurred by PRC issuers is strictly controlled by the State Administration of Foreign Exchange.[41]

In addition to the foreign exchange controls, there are other restrictions on PRC companies issuing securities outside the PRC, including the *Company Law of the People's*

[41] Unless foreign currency obligations are approved by and registered with the State Administration of Foreign Exchange, such obligations are unenforceable.

Republic of China, *Special Provisions from the State Council on the Overseas Floatation and Listing of Stocks*, and *Mandatory Provisions in the Articles of Association of Companies Listed Overseas*. The approval from the China Securities Regulatory Commission[42] is required before any overseas offering or sale can be made by a PRC issuer. Among other requirements, the issuer must arrange for asset appraisal, satisfy the continuous profit test for the last three years, undertake a corporate reorganization to eliminate non-core assets, separate management from ownership, and establish prescribed corporate governance structure and procedures.

2. Restrictions on solicitation or advertisement of investors in the People's Republic of China by offshore issuers

The PRC has strong controls over the offer and issuance of securities in the PRC. Only issuers who have been incorporated in the PRC and organized as joint stock limited companies under the *Company Law of the People's Republic of China* may offer securities to the public in the PRC. Under Article 2, Section 10 of the *Securities Law of the People's Republic of China*, before any securities are offered to the public, the company must first apply and obtain the

[42] The China Securities Regulatory Commission reviews and approves the application for any offer and sale of securities by PRC issuers.

approval of the China Securities Regulatory Commission for the proposed issuance.[43]

Since the offer and sale of securities in the PRC by non-PRC issuers is not currently permitted, the solicitation or advertisement of sale of securities by offshore issuers would probably viewed as an unauthorized offer of securities to the public in violation of PRC securities law and regulations. Brokers are also prohibited from soliciting such sales unless they are registered with and licensed by the China Securities Regulatory Commission.

Thailand

1. Restrictions on investment and issuance outside Thailand

Thailand has strong capital controls. Remittance of funds outside Thailand is subject to the exchange controls pursuant to the Exchange Control Act 1942. In general, a foreign exchange transaction and transfer of funds outside Thailand requires an approval from the Bank of Thailand. The Bank of Thailand has absolute discretion as to whether an approval will be granted.[44] Under the notification of the Exchange Control Officer,[45] only the following

[43] Subject to regulatory approvals, these PRC-incorporated issuers may offer and sell securities both inside and outside the PRC. Shares offered and sold inside the PRC are A Shares. A Shares are shares denominated in Renminbi and only available to PRC persons, including natural persons and legal persons. A Shares are also available to a limited number of qualified foreign institutional investors, who have obtained required PRC governmental approvals. B Shares are shares denominated in Renminbi, listed on PRC securities exchanges, and traded in foreign currency. B Shares are only available to foreign persons, including those from Hong Kong, Macao and Taipei, China. However, B Shares are not currently being issued, and the PRC is thinking of combining the B Share and A Share markets. Outside the PRC, PRC issuers may offer and sell H Shares, which are listed in Hong Kong, and shares in other markets. All offers and sales of A, B, H Shares and other foreign shares must be approved by the CSRC. Previously, the shares representing the State's shareholdings in listed companies were illiquid "State Shares" or "Legal Person Shares". Through the process of share reform, such shares are being converted to tradable domestic A shares.

[44] Under certain conditions, commercial banks are authorized to consider and approve foreign exchange transactions.

[45] Notification of the Exchange Control Officer re: prescribing rules and procedures concerning offshore investment in securities dated 12 January 2007.

"investors" (qualified investors) are permitted to purchase or exchange foreign currency for the purpose of investing in securities issued and offered for sale outside Thailand: (1) the Government Pension Fund, (2) the Social Securities Fund, (3) provident and mutual funds (excluding private funds) (4) securities companies, (5) insurance companies; and (6) certain financial institutions.

These qualified investors may purchase or exchange foreign currency for the purpose of purchasing "offshore Thai securities," securities issued by the Thai government or a Thai corporation in foreign currency and offered for sale in a foreign country, without any limitations. Qualified investors may also invest in other "foreign securities" if the net investment amount, calculated on a cost basis, does not exceed US$50 million or the equivalent. Investments exceeding that amount must be approved by Exchange Control Officer. Under the exchange control law, qualified investors permitted to invest in offshore Thai or foreign securities, may only resell those securities to other entities in a foreign country, a corporation authorized by the Bank of Thailand to engage in foreign exchange business or other qualified investors.

Thai capital controls do not generally restrict Thai issuers from issuing securities outside Thailand. However, Thai issuers seeking to issue securities outside Thailand must get approval from the Securities and Exchange Commission, and comply with the regulation of the Securities and Exchange Commission in connection with the offer or sale of such securities.

2. Restrictions on solicitation or advertisement of investors in Thailand by offshore issuers

It is not clear whether marketing activities conducted by offshore entities to customers in Thailand with respect to sale of securities are permitted. There is no official guideline, release or interpretation by the Securities and Exchange Commission on this matter.[46]

Singapore

1. Restrictions on investment and issuance outside Singapore

Singapore investors can freely buy securities issued outside Singapore and issuers in Singapore can freely issue securities in foreign markets.

2. Restrictions on solicitation or advertisement of investors in Singapore by offshore issuers

Any offshore issuer soliciting or advertising to the public in Singapore must register the offer and comply with the requirements of the Securities and Futures Act ("SFA").[47]

[46] In practice, some international securities firms, bankers or other entities have taken a lenient interpretation of what would be regarded as marketing or commercial activities without constituting undertaking of securities businesses. Under this interpretation, some entities may engage in marketing activities outside Thailand by way of telephone, email or internet or other electronic means. Nevertheless, these marketing activities are typically confined to institutional investors that already have certain connection with such entities, and not to the general public.

[47] Generally, securities may be offered in Singapore under three different SFA regimes:

(a) as shares or units of shares of a corporation (whether incorporated in Singapore or not), or debentures or units of debentures of an entity (together, "Shares/Debentures");
(b) as units of a collective investment scheme ("CIS"), whether incorporated or constituted in Singapore or not ("CIS Securities"); or
(c) as units of a business trust, whether constituted in Singapore or not.

I only refer here to the "Shares/Debentures" regime.

Further, Section 339 of the SFA provides that (a) where a person does an act partly in and partly outside Singapore, which if done wholly in Singapore would constitute an offence; or (b) does an act outside Singapore which has a substantial and reasonably foreseeable effect[48] in Singapore, and if carried out in Singapore would constitute an offense, then that person shall be guilty of that offense as if the act were carried out by that person in Singapore.

Section 82 of the SFA provides that no person, whether as principal or agent, shall carry on business in any regulated activity or hold himself out as carrying on such business unless he is a holder of a capital markets services license ("CMS License") for that regulated activity or is an exempted person for the purposes of the SFA. The solicitation or advertisement of securities will constitute "dealing in securities[49]," which is a regulated activity and therefore requires CMS

[48] What conduct would have a "substantial and reasonably foreseeable" effect in Singapore is not defined. In this regard, the MAS has issued the Guidelines on the Application of Section 339 (Extraterritoriality) of the SFA which elaborate on the general principles behind MAS' policy stance on the scope and application of Section 339 in relation to cross-border activities that could constitute an offence.
MAS will consider, inter alia, the following factors to determine if an act would have a "substantial effect":

(a) the number of persons to whom the offer of services or invitation to engage in a regulated activity is made; or
(b) whether the acts have a significant or adverse impact on the soundness, stability and safety of Singapore's financial system, or on public or investor confidence in the soundness, stability and safety of Singapore's financial system, or are detrimental to the public interest or the protection of investors.

An act would have a "reasonably foreseeable effect" if, inter alia:

(a) the offer of services or the invitation to engage in any regulated activities is made to persons in Singapore;
(b) any advertisement or published information about an offer of services or invitation to engage in any conduct that involves regulated activities is directed or targeted at persons in Singapore;
(c) the offshore entity accepts or appears willing to accept orders or applications from persons in Singapore to engage in any conduct that involves regulated activities; or
(d) the offshore entity enters into contractual relationships with persons in Singapore in connection with the regulated activities.

[49] "Dealing in securities" is defined in the SFA as:
"(whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities."

license.

When read with Section 339, Section 82 would suggest that foreign issuers, who advertise or solicit sales of securities even outside Singapore to Singapore's investors, will be required to hold a CMS License.[50]

3. Exemptions

There are exemptions from the prospectus registration requirements of the SFA for offers in amounts of not less than S$200,000 to (1) no more than 50 persons in any 12-month period; (2) to institutional investors; (3) accredited investors;[51] (4) certain officers or relatives of the issue; and (5) certain special purpose vehicles and trusts.

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[50] Alternatively, a foreign issuer may choose to make the offer through an appropriately licensed entity in Singapore.

[51] An "accredited investor" means an (i) individual: (A) whose net personal assets exceed in value $2 million (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount; or (B) whose income in the preceding 12 months is not less than $300,000 (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount; (ii) a corporation with net assets exceeding $10 million in value (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe, in place of the first amount, as determined by: (A) the most recent audited balance-sheet of the corporation; or (B) where the corporation is not required to prepare audited accounts regularly, a balance-sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance-sheet, which date shall be within the preceding 12 months; (iii) the trustee of a trust of which all property and rights of any kind whatsoever held on trust for the beneficiaries of the trust exceed $10 million in value (or its equivalent in a foreign currency); (iv) an entity (other than a corporation) with net assets exceeding $10 million in value (or its equivalent in a foreign currency); (v) a partnership (other than a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2005 (Act 5 of 2005)) in which each partner is an accredited investor; and (vi) a corporation, the sole business of which is to hold investments and the entire share capital of which is owned by one or more persons, each of whom is an accredited investor.

Summary of Country Provisions

Table 8 below summarizes the country restrictions on offshore investment and issuance.

Table 8: Restrictions on Offshore Investment and Issuance

Jurisdiction	**Restriction on residents investing in securities issued offshore**	**Restrictions on residents issuing securities offshore**
Hong Kong	None.	None.
Japan	Only reporting obligation	Only reporting obligation
The Republic of Korea	Only procedural requirement (Non-institutional investors must invest in foreign securities through the brokerage of domestic securities companies)	Only reporting obligation
The Philippines	Limitation on the amount of foreign exchange available from banks in the Philippines. (US$6,000,000 per Year)	None.
India	Limitation on amount of securities (US$ 100,000 per Year)	Only listed companies in India may issue foreign currency denominated equity and foreign currency denominated debt with certain requirements.
People's Republic of China (PRC)	Only qualified domestic institutional investors (the "QDIIs") are allowed to invest, within their allocated quotas, in certain overseas financial products (e.g. such as fixed income products and stocks).	• Approval of the State Administration of Foreign Exchange • Repatriation and conversion to Renminbi of the proceeds within a specified time • Control of the aggregate amount of foreign currency debt etc.
Thailand	Only certain kinds of investors (e.g. a government pension fund, insurance company, securities company etc.) are permitted to purchase foreign currency for the purpose of investing in foreign securities.	No restriction from capital control. (Note: The Thai issuers who wish to issue securities outside Thailand must get approval from and comply with the regulation of the Securities and Exchange Commission in connection with the offer or sale of each specific type of securities.)
Singapore	None.	None.

Restrictions on solicitation or advertisement of onshore investors

Countries with exchange or capital controls, India and the People's Republic of China, do not deal with the issue because offshore issuers cannot generally offer securities within their territory. For the other countries, with respect to public offerings, no solicitation or advertisement can occur onshore unless the offering is registered. There is some degree of difference among countries as to what is onshore advertisement or solicitation. These countries all allow, in different form, exemptions from registration, and from the prohibition on solicitation and advertisement, for wholesale offers, although what constitutes such offerings (see Table 9 below) differs among countries, e.g. whether the offer can be to just institutions, or high net worth (accredited investors), as well.

Table 9: Exemptions from Registration Requirements

Hong Kong	• Offer to professional investors • Offer to not more than 50 investors. • Offer in which the minimum denomination or, minimum consideration payable by any person is not less than HK$500,000 • Total offer size does not exceed HK$5,000,000
Japan	• Offer to qualified institutional investors • Offer to fewer than 50 investors • Total offer size does not exceed ¥100,000,000
The Republic of Korea	• Offer to accredited investors (including institutional investors) • Offer to fewer than 50 investors
The Philippines	• Offer to qualified buyers • Offer to not more than 19 investors
Singapore	• Offer to institutional investors and Accredited investors • Offer to not more than 50 investors

V. Creation of an Offshore Market

The creation of an offshore market requires some basic changes in some of the current practices in some of the 8 jurisdictions examined in this study. First, the People's Republic of China, India, Thailand and the Philippines would have to remove remaining foreign exchange restrictions on local investors investing in the foreign currency bonds of offshore issuers. This could be done in a number of ways, for example by having higher ceilings in the Philippines and India, and setting ceilings in the PRC and Thailand. And the ceilings could apply only to "Asian bond issues," as qualified by a central Asian authority (CAA), e.g. the ADB or the secretariat of the ASEAN+3.

One issue that would need to be considered in creating an offshore market is whether there should be any restrictions on local companies going offshore to issue domestic currency bonds to local investors, e.g. Thai company in Singapore issues Baht bonds to Thai investors. The concern here might be that permitting such practices would undercut the development of domestic currency bond markets within the country and interfere in the conduct of monetary policy, concerns that many developed countries like the U.S. had when the Eurocurrency markets were developing in the West. How serious this problem would be is unclear. In the government market, sovereigns would probably continue to issue a large portion of their local currency debt only in their own countries to local investors whether onshore or offshore integrated markets were available. Thus, the issue is whether local market development would be enhanced by issuing a "tranche" of regional debt (an unusual event) in the sovereign's own market, as would occur in the onshore alternative, or having the entire debt issued offshore. If regional offerings are only a small percentage of total debt issued, it is unlikely that local market development would depend on whether this debt was issued within the country. In the corporate debt market, only well known issuers would attract a regional following. Other issues would continue to be issued onshore within the country, again providing sufficient flow for the development of the local markets.

In the event that countries remained concerned about onshore activity being diverted abroad, they could prevent or limit the ability of local investors to buy local currency bonds issued abroad. This would result in all issuers, sovereign or corporate, selling to local investors in local markets. However, bonds issued to all foreign investors would still be issued offshore. So, a Korean company selling bonds in Singapore could sell its bonds to all non-Korean investors in Singapore, but would have to sell bonds to Korean investors in Korea. One could also provide that resales of bonds issued by local companies and bought by local investors would have to be resold locally.

Issuing bonds offshore in foreign currencies does not raise issues for the development of local currency bonds markets. Only the People's Republic of China and India generally restrict domestic issuers from issuing bonds in foreign currency outside the issuer's country. A Thai company that wishes to issue securities outside Thailand must comply with the regulations of the SEC in connection with the offer for sale of each specific type of securities. Yet there could well be a more general concern, like that of the PRC, of local companies acquiring foreign debt (sovereigns can obviously make this decision for themselves). This could be addressed at the outset by host countries imposing ceilings and qualifications on offshore issues, rather than completely prohibiting them.

A second issue is the kind of investors who will be able to participate in the offshore markets. At a minimum, one should allow institutions, and probably other "qualified" investors. Ideally, this would be accomplished by standardizing the exemptions across all countries—as we have seen they differ substantially today. The EU is currently engaged in such an effort.[52] At the outset, these standardized exemptions might be developed by a Committee of Asian Securities Regulators ("CASR") and only apply to "Asian bond issues" as qualified by the CAA. If the market is extended to retail investors, then minimum disclosure standards will be required to make sure these investors are protected, and the development of such standards could be difficult.

Countries should permit general advertisement and solicitation of all investors even

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[52] European Commission, Internal Market and Services DG, "Call for Evidence Regarding Private Placement Regimes in the EU," April 2007.

though only institutional and qualified investors would be able to purchase the issue, although this would require a change in the approach of most countries. In the United States, the SEC requires that issues that can only be bought by institutional or qualified investors can only be advertised or solicited from such investors, but this makes it very difficult to reach them through general marketing. Many have criticized these restrictions—the important question is who can buy the securities not how the securities are marketed.

While these changes will not be easy, they will be considerably easier to achieve than the harmonization required by integration of onshore markets. Even in Europe, it is the offshore markets which integrate the E.U. countries despite the aspirations and rhetoric about the onshore markets. This is particularly true with respect to the institutional and wholesale bond market.