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Kontakt/Contact

ZBW – Leibniz-Informationszentrum Wirtschaft/Leibniz Information Centre for Economics
Düsternbrooker Weg 120
24105 Kiel (Germany)
E-Mail: [rights\[at\]zbw.eu](mailto:rights[at]zbw.eu)
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ASEAN+3 BOND MARKET GUIDE 2016 THAILAND

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Tel +63 2 632 4444; Fax +63 2 636 2444
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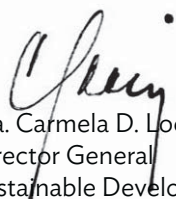
Foreword

The Asian Development Bank (ADB) is working closely with the Association of Southeast Asian Nations (ASEAN) and the People's Republic of China (PRC), Japan, and the Republic of Korea—collectively known as ASEAN+3—to develop local currency bond markets and facilitate regional bond market integration under the Asian Bond Markets Initiative (ABMI) in order to strengthen the resilience of the region's financial systems.

Thanks to the efforts of member governments, local currency bond markets in the region have grown rapidly, with the total outstanding amount of bonds reaching more than USD8 trillion in 2015. However, financial markets are still relatively less integrated than the region's trade linkages and supply chain networks. If efforts toward harmonization and integration were to succeed, financial markets in ASEAN+3 would benefit from much larger economies of scale and increased efficiencies, while vast savings could be utilized for the region's enormous investment needs. Therefore, the strengthening of bond markets should be pursued in line with a common understanding of what needs to be harmonized and integrated from the early stages of market development.

The ASEAN+3 Bond Market Forum (ABMF) was established with the endorsement of the ASEAN+3 Finance Ministers in 2010 as a common platform to foster standardization of market practices and harmonization of regulations relating to cross-border bond transactions in the region. As an initial step, ABMF published the ASEAN+3 Bond Market Guide in 2012, which was welcomed as the first official information source offering a comprehensive explanation of the region's bond markets.

Since publication of the ASEAN+3 Bond Market Guide, bond markets in the region have continued to develop. ABMF recognizes the need for revisions to the guide to reflect these changes, even though it is never an easy task to keep up with rapid changes in the markets. This report is an outcome of the strong support and kind contributions of ABMF members and experts, particularly from Thailand. The report should be recognized as a collective good to support bond market development among ASEAN+3 members. It is our hope that the revised ASEAN+3 Bond Market Guide will facilitate further development of the region's bond markets and contribute to increased intraregional bond transactions.



Ma. Carmela D. Locsin
Director General
Sustainable Development and Climate Change Department (SDCC)

Acknowledgments

The Thailand Bond Market Guide was first published in 2012 as the initial output of Phase 1 of the ASEAN+3 Bond Market Forum (ABMF).¹ Across the region, domestic bond markets, including the Thai bond market, have experienced tremendous development over the past 4 years. Now in Phase 3, ABMF would like to share, in the public domain, information on these developments by publishing an update to the Thailand Bond Market Guide.

The ABMF Sub-Forum 1 team—comprising Satoru Yamadera (principal financial sector specialist, Asian Development Bank, Sustainable Development and Climate Change Department), Kosintr Puongsophol (financial sector specialist, Asian Development Bank, Sustainable Development and Climate Change Department), and Asian Development Bank consultants Shigehito Inukai and Matthias Schmidt—would like to stress the significance and magnitude of the contributions made by ABMF national members and national experts for Thailand, including the Bank of Thailand; Ministry of Finance of Thailand (through both its Fiscal Policy Office and Public Debt Management Office); Securities and Exchange Commission, Thailand; Thai Bond Market Association; and Stock Exchange of Thailand. These policy bodies, regulatory authorities, and market institutions generously gave their time for market visit meetings, discussions, and follow-up. They have also reviewed and provided inputs on the draft Thailand Bond Market Guide over the course of ABMF Phase 3.

The ABMF team also would like to express its thanks to Bank of Tokyo-Mitsubishi-UFJ (Bangkok Branch), which was recently integrated into Bank of Ayudhya (a member of MUFG Financial Group), and to Siam Premier International Law Office for contributing significantly to the research and discussions on Thai bond market developments, and to the implementation of the ASEAN+3 Multi-Currency Bond Issuance Framework in the Thai bond market.

The ABMF team would like to acknowledge that the Thailand Bond Market Guide is also the result of consultations with ABMF international experts who contributed their time and resources, and offered access to their networks in support of the market visits and related discussions.

No part of this report represents the official views or opinions of any institution that participated in this activity as an ABMF member or expert. The ABMF Sub-Forum 1 team bears sole responsibility for the contents of this report.

May 2016

ASEAN+3 Bond Market Forum

¹ ASEAN+3 refers to the 10 members of the Association of Southeast Asian Nations (ASEAN) plus the People's Republic of China, Japan, and the Republic of Korea.

Abbreviations

ABMF	ASEAN+3 Bond Market Forum	PDMO	Public Debt Management Office (of the Ministry of Finance)
ADB	Asian Development Bank	PP	private placement
AI	Accredited Investor	PP-AI	private placement for Accredited Investors
AMBIF	ASEAN+3 Multi-Currency Bond Issuance Framework	SBT	Specific Business Tax
ASEAN	Association of Southeast Asian Nations	SEA	Securities and Exchange Act
ASEAN+3	Association of Southeast Asian Nations plus the People's Republic of China, Japan, and the Republic of Korea	SEC	Securities and Exchange Commission, Thailand
B.E.	Buddhist Era (suffix to laws and regulations, denoting the year of the official Thai solar calendar)	SET	Stock Exchange of Thailand
BIBOR	Bangkok Interbank Offered Rate	SF1	Sub-Forum 1 of ASEAN+3 Bond Market Forum (ABMF)
BOT	Bank of Thailand (http://www.bot.or.th)	SOE	state-owned enterprise
CNY	Chinese renminbi (ISO Code)	SRO	self-regulatory organization
DPA	Deposit Protection Agency	SSF	Single Submission Form
DTA	double taxation agreement	TBX	Thailand Bond Exchange (formerly BEX)
FIDF	Financial Institutions Development Fund	TBDC	Thai Bond Dealing Centre
FIRSTS	Fixed Income and Related Securities Trading System	TFEX	Thailand Futures Exchange
FPO	Fiscal Policy Office (of the Ministry of Finance)	TFIIC	Thailand Financial Instruments Information Center
GMRA	Global Master Repurchase Agreement	TFRS	Thai Financial Reporting Standards
IFRS	International Financial Reporting Standards (http://www.ifrs.org/Use-around-the-world/Documents/Jurisdiction-profiles/Thailand-IFRS-Profile.pdf)	TGB	Thai Government Bond
IPOS	Initial Public Offering System	ThaiBMA	Thai Bond Market Association
Lao PDR	Lao People's Democratic Republic	THB	Thai baht (ISO code)
MAI	Market for Alternative Investment	TSD	Thai Securities Depository
MOF	Ministry of Finance	USD	United States dollar (ISO code)
MTN	medium-term note	VAT	value-added tax
OTC	over-the-counter		

USD1 = THB35.9233 as of 31 December 2015
(BOT published rate)

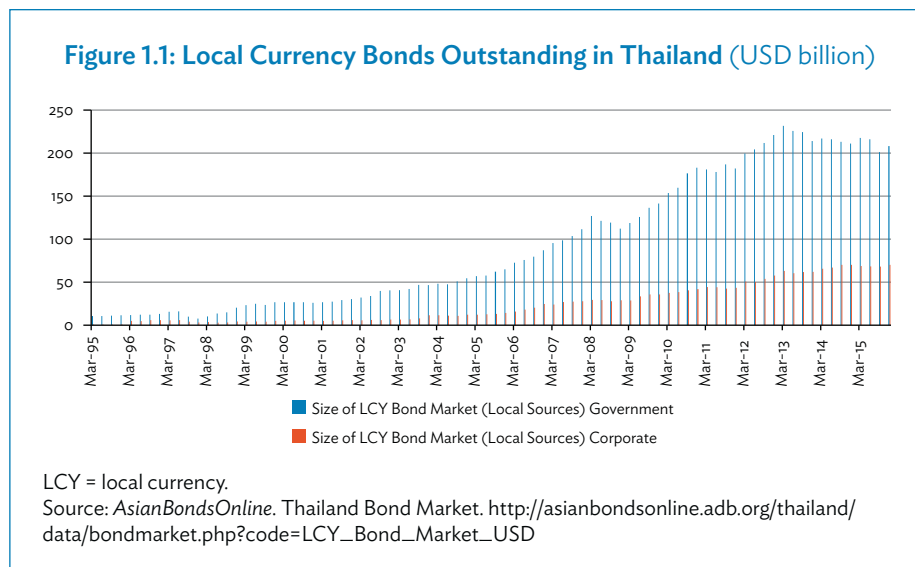
Overview

A. Introduction

The Thai bond market has experienced rapid growth in the years since the 1997/98 Asian financial crisis. To help support cash-strapped financial institutions, the Government of Thailand issued bonds for the first time in June 1998. The total amount of government bonds issued under this program was THB500 billion.

The government has continued to issue bonds since then with the primary objectives being to finance the annual budget deficit, support social and economic development, and restructure public debt.¹ The substantial amount of new government bonds coupled with declining interest rates has contributed to the robustness of the bond market as evidenced by a significant increase in both market size and trading volume. At the same time, the Thai economy is generating significant disposable funds, which are expected to drive a corresponding demand for investment assets.

According to data published by *AsianBondsOnline*, the amount of local currency bonds outstanding was THB10.0 trillion (USD278 billion) at the end of December 2015. Government bonds still dominate the market, comprising approximately 75% of all bonds and notes outstanding at the end of December 2015. At the same time, there has been a gradual increase in corporate bond and note issuance as a proportion of total issuance in recent years (Figure 1.1).



¹ Details of government bond issuance in the Thai market may be found at <http://www.thaibma.or.th/EN/Home.aspx>

With the introduction of regulations governing corporate bond note issuance, a variety of issuers have entered the market, including multinationals, supranationals, ASEAN+3 governments, and local companies.²

Foreign issuers may issue bonds or notes under the so-called Baht Bond issuance approval concept for the debt securities of foreign issuers, which is supervised by the Public Debt Management Office (PDMO) of the Ministry of Finance (MOF). Any issuance of debt securities in the Thai market is subject to the regulatory framework put in place by the Securities and Exchange Commission, Thailand (SEC) and other regulatory authorities. For more details on the legal and regulatory framework, please refer to Chapter II.

Thailand's regulatory environment is conducive to the implementation of the proposed ASEAN+3 Multi-Currency Bond Issuance Framework (AMBIF) that was developed by the ASEAN+3 Bond Market Forum (ABMF) under the guidance of the Asian Development Bank (ADB). Key features of the Thai market, such as a Private Placement for Accredited Investors (PP-AI), are further enhanced by the acceptance of English documentation and disclosure items for issuance approvals sought from the regulatory authorities, including use of the Single Submission Form (SSF). For more details on the SSF, please refer to Chapter II.F.

An investment in government bonds by nonresident (foreign) investors is tax exempt, while the taxation of corporate bonds and notes for nonresidents may attract tax concessions, depending on applicable double taxation agreements (DTAs).

Bond trading is conducted either over-the-counter (OTC) or via the Thailand Bond Exchange (TBX), which was established by the Stock Exchange of Thailand (SET) in November 2003.

All OTC and TBX trades are reported to the Thai Bond Market Association (ThaiBMA) within 30 minutes of execution. ThaiBMA collects and distributes both intraday and end-of-day data, and also publishes relevant daily summary reports on its website and through a number of other channels.³

B. Historical Development of the Thai Bond Market

Thailand's bond market has developed significantly since the 1997/98 Asian financial crisis, with increased local currency bond issuance and trading today. The MOF has stepped up issuance of government bonds for its financing requirements and built a reliable yield curve that adequately prices market risk. Government bonds still dominate the market. Since the late 1990s, both government and corporate issuers have increasingly used bonds to raise capital.

A number of government initiatives since the 1997/98 Asian financial crisis have contributed to the development of the Thai bond market. Building on the two previous Capital Market Master Plans launched in 2002 and 2006, the Capital Market Master Plan, 2009 continues to have a bearing on the development of the Thai bond market.

² ASEAN+3 refers to the 10 members of the Association of Southeast Asian Nations (ASEAN) plus the People's Republic of China, Japan, and the Republic of Korea.

³ ThaiBMA. Daily Market Summary. <http://www.thaibma.or.th/compositerpt/dailyreport.aspx>

a. Capital Market Master Plan, 2009

The most recent Capital Market Master Plan was detailed in an MOF press release on 4 November 2009.⁴ The Economic Cabinet approved the Capital Market Master Plan, 2009 as proposed by the Capital Market Development Committee, which is chaired by the Minister of Finance. For easy reference and a good summary of the proposed measures, a portion of the text of the press release is reproduced in the following:

The capital market is important to a country's economic and social system. It plays the crucial roles of capital raising for both public and private sectors, promoting balance and stability in the financial system, decreasing dependency on the banking sector, driving the economy forward and creating jobs, as well as being an alternative method for savings. A strong capital market will lessen the impact of economic fluctuations which can be compounded by the fast-flowing nature of capital. However, there are still many issues besetting the Thai capital market. Few institutional investors, a small retail investor base, limited financial products, high transaction costs, and lack of efficient regulatory enforcement are some examples. Moreover, Thailand's capital markets in recent times have grown at a very slow pace. The size of the stock market compared to the gross domestic product [was] only 51% as of June 2009, which is smaller than other [markets] in the region such as [Hong Kong, China] (845%); Singapore (202%); Malaysia (104%); and [the Republic of Korea] (66%). Should this trend continue, Thailand's capital market will stagnate and become increasingly marginalized. Various studies have shown that inadequate development of the capital markets will impact its ability to raise, channel, and monitor resources efficiently. In the end, this will lead to loss of growth opportunities, standard of living, and prosperity.

In recognizing the importance of the capital market, Prime Minister Abhisit Vejjajiva appointed the Capital Market Development Committee (Committee) on 27 January 2009. This appointment is a continuation from the committee appointed on 25 March 2008. The Committee is tasked with formulating an overall master plan for the development of the Thai capital market as well as monitoring the implementation of such a plan. The Committee comprises of the Minister of Finance as the chairperson and experts from public and private sectors.

In formulating the Capital Market Development Master Plan (Master Plan), the Committee solicited inputs and opinions from all stakeholders, and formed the vision and the 5-year development objectives (2009–2013) as follows:

- (i) The Thai capital market is the primary mechanism for aggregating, channeling, and monitoring economic resources.
- (ii) The goal of the capital market is to perform these tasks efficiently to increase overall competitiveness of Thailand.

The Committee has formulated six primary missions and objectives to realize this vision:

- (1) Six Primary Missions
 - (a) The capital market must be easily accessible to investors seeking investment opportunities and corporations seeking funds;

⁴ See http://www2.mof.go.th/press_releases_detail.php?id=21

- (b) increase quality and variety of products and services;
- (c) reduce cost of funds to issuers and any intermediary and transaction costs to investors to enable Thai companies to become more competitive;
- (d) develop efficient infrastructure framework in legal, regulations, accounting, tax, information, technology, and enforcement;
- (e) educate investors and ensure that adequate protection mechanisms are in place; and
- (f) promote competition in the Thai capital market and build links with the global market system.

(2) Eight Important Reform Measures

The Master Plan consists of eight important reform measures that will affect the course of development and bring about major changes in the system.

Measure 1: Abolish the Monopoly and Improve Competitiveness of the Stock Exchange of Thailand

Liberalization of capital flows and competitive pressure increase the chances of the SET being marginalized. To make the SET responsive to fast-changing business environments, its business structure must be transformed to increase efficiency and promote competitiveness. The first step is to demutualize the SET, convert it into a public company (Exchange Company), separate the exchange business from capital market development work, and establish a Capital Market Development Fund with the mission of long-term capital market development. The SET's monopoly on exchange businesses will also end. Therefore, there may be other trading platforms permitted to trade listed stocks.

The Exchange Company will be allowed to permit persons other than securities firms incorporated in Thailand to have direct access if it wishes to in order to increase liquidity and expand the investment base to promote linkage with the global capital market, and decrease limitations which currently obstruct the growth of Thai capital market.

Measure 2: Liberalization of Securities Business to Promote Market Efficiency

This measure, while in line with recent trends of liberalization in the financial system, also aims to increase the competitiveness of the Thai capital market and enable it to withstand the impact of fast capital flows. Liberalization of licenses will foster market competition. Securities firms will have to adjust by forming alliances with strategic partners to increase its efficiency by offering new products in the long-run.

Measure 3: Reforming Legal Framework

Currently, there are draft laws relating to the capital market being proposed to the House of Representatives:

- (1) Amendment Act to Royal Enactment on Special Purpose Juristic Persons for Securitisation B.E.
- (2) Draft of Commercial Collateral Act B.E.
- (3) Amendment Act to the Civil and Commercial Code B.E.

The government should keep pushing for passage of these laws. The Committee also [passed a] resolution to propose further reforms, including

- (1) laws to facilitate mergers and acquisitions activities;
- (2) adopt [a] civil penalty; and
- (3) amend the Civil Procedure Code to include class action lawsuits, which would help make enforcement of the Securities and Exchange Act (SEA) more efficient.

Measure 4: Streamline the Tax System

This measure aims to make the tax system more efficient [for] transactions, improve fairness, and provide tax incentives for transactions that the state would like to promote for the development of the capital market. Taxation areas to streamline include those related to mergers and acquisitions, investments in debentures, elimination of double taxation on dividends, equalization of tax incentives on direct investment and investment through intermediaries, transfer of investments in provident funds, public savings funds, life insurance premiums, Islamic bonds, securities borrowing and lending of the Bank of Thailand (BOT), and venture capital.

Measure 5: Develop Financial Products

Currently, the Thai capital market has few financial products to choose from, which cannot take care of the diverse needs of investors, thus making the market relatively unattractive. This measure aims to push for the development of new products which would help increase the variety of instruments and consequently help develop the market.

Examples of new products are an infrastructure fund to promote investments by the private sector, life annuities, interest rate derivatives, inflation-indexed government bonds, Islamic bonds, venture capital, and divestiture of the MOF shares of publicly traded companies.

Measure 6: Establishment of a National Savings Fund

The MOF proposed a National Savings Fund Act, and the Cabinet, in a meeting on 20 October 2009 agreed to the first draft. The National Savings Fund will cover workers outside the formal system, comprising approximately 70% of the total labor force of Thailand. The objective is to institutionalize savings for retirement, create equality of opportunity, and ensure that these informal sector workers are provided with some income after retirement. The National Savings Fund will become a major source of savings and investments in Thailand and will contribute to the development of Thai capital markets. It will help lessen the volatility of capital movements and also indirectly promote new financial products.

Measure 7: Developing a Culture of Savings and Investments

This measure aims to provide choices when investing in provident fund[s] and [the] Government Pension Fund, so that investors' needs are met. It will also encourage investors to be proactive about acquiring new knowledge on financial products so that investors can truly determine what types of products suit them.

Measure 8: Development of the Domestic Bond Market

This measure aims to develop the government's cash management methods and study alternatives to amending laws relating to [T]reasury reserves, so that the government can issue [T]reasury bills efficiently. The government should also be able to manage [T]reasury reserves for yields by such means as depositing the reserves with other institutions instead of the BOT. This will help decrease the cost of funds that the government faces. Moreover, the BOT will take the lead in developing and promoting the private repo and securities borrowing and lending markets, providing the bond market with another tool to manage liquidity efficiently with low risks. Overall, this would lead to further growth in the market.

Aside from the eight reform measures, the Master Plan consists of 34 additional measures that should be implemented. These measures are important in changing the basic framework, developing new infrastructures in the long run, and leading to the fulfillment of the Master Plan's main objectives.

Success in implementing the Master Plan, aside from directly benefiting the capital market, will have far-ranging benefits to society and the economy as a whole. It will improve competitiveness, promote savings and retirement planning, improve linkages between Thai and global capital markets, and benefit all sectors of society. The results will be reflected in the Thai capital market, which will grow larger, gain liquidity, and strengthen the balance and stability of the financial market. It will become a key driver in economic development, which will be observable in the increased prosperity of the Thai people in the long run.

Legal and Regulatory Framework

A. Legal Tradition

The legal structure of Thailand follows the civil law tradition, guided by the Constitution of Thailand (last amended in 2007) and expressed through the Civil and Commercial Code and other codes.

B. English Translation

Thailand does not have a government policy to translate its laws and regulations into official English versions. However, unofficial translations of the Thai Constitution and relevant laws and regulations are available from a wide range of sources, often including authoritative versions from the respective ministries, government offices, and regulatory authorities.

While the English translation of Thai laws and regulations find frequent use, they may only be used for reference since the final interpretation—and the acceptance and application by Thai courts—is based on an original Thai version.

C. Legislative Structure

Thailand features a multitiered legislative structure to govern the financial and capital markets, guided by the Thai Constitution:

[1st tier] Thai Constitution

[2nd tier] Statutes and acts (key legislation for the securities market)

[3rd tier] Subordinate legislation (regulations, notifications, orders, royal decrees, rules)

Table 2.1 illustrates the legislative structure outlined above by giving examples of relevant securities market legislation for each of the individual tiers.

Key legislation is the summary term for laws specifically aimed at a particular market such as the securities market or capital market. These laws establish and govern securities markets or market segments, including the bond market, and related institutions and participants. These laws are passed by the National Assembly and presented by the Prime Minister to the King to obtain royal assent. Laws take effect upon publication in the Royal Gazette. The Securities and Exchange Act B.E. 2535, 1992 and the Public Debt Management Act B.E. 2548, 2005 represent the key legislation for the Thai bond market.

Table 2.1: Examples of Securities Market Legislation in Each Legislative Tier

Legislative Tier	Content or Significant Examples
Thai Constitution	Principles, rights, and obligations
Statutes and acts (key legislation)	<ul style="list-style-type: none"> Bank of Thailand Act B.E 2551, 2008 Securities and Exchange Act B.E. 2535, 1992 Public Debt Management Act B.E. 2548, 2005
Subordinate legislation (regulations, notifications, orders, royal decrees, and rules)	<ul style="list-style-type: none"> Notification of the Securities and Exchange Commission No. KorChor. 5/2552, Re: Determination of Definitions in Notifications Relating to Issuance and Offer for Sale of Debt Securities Regulations, 2009 Notification of the Securities and Exchange Commission No. KorChor. 9/2555, Re: Determination of Definitions of Institutional Investors and High Net Worth Investors, 2012 Ministry of Finance Notification for the Public Debt Management Office

Notes: B.E. (Buddhist Era) denotes a year in the Thai calendar. For an explanation of the abbreviations in the Securities and Exchange Commission Notifications, please refer to section D.4 in this chapter.

Source: Compiled by ADB consultants for SF1 and based on publicly available information.

Regulations are issued by the MOF as the government body charged with the overall supervision and governance of the securities and capital markets. Regulations interpret aspects from key legislation and elaborate on the roles and responsibilities of market institutions and their participants.

Notifications and rules are issued by the regulatory authorities of the financial and securities markets—the Bank of Thailand (BOT) and the SEC, respectively—for the activities and market participants under their respective purviews. These directives and other statements contain descriptions on how regulations should be applied and specific market activities carried out.

D. Thai Bond Market Regulatory Structure

Thailand's capital market is governed by the rules and regulations issued and enforced by the BOT, MOF, SEC, SET, and ThaiBMA.

Market regulatory authorities involved in bond and note issuance approval processes include the BOT, MOF (through the PDMO), and SEC.

1. Ministry of Finance

As the preeminent regulator, the MOF oversees the financial and capital markets of Thailand. The activities of the BOT and the SEC are overseen by the MOF. The roles and responsibilities of the MOF are listed below.

- (i) The MOF is the highest-level administrator and sets the overall fiscal and monetary policy directions of the government.
- (ii) It oversees matters concerning fiscal policy, customs, excise, revenue, public debt, and policies on state-owned enterprises (SOEs).

- (iii) It is also vested with the power to provide loan guarantees for government agencies, financial institutions, and SOEs.

Situated within the MOF is the Fiscal Policy Office (FPO), a department-level policy unit responsible for economic, monetary, and fiscal policies. The FPO is a focal-point agency performing advisory functions and policy formulation in different areas such as fiscal, tax, monetary, financial, international economic, and savings and investment policies, as well as macroeconomic analysis. The FPO also coordinates with ADB, the International Monetary Fund (IMF), and the World Bank.⁵ The director-general of the FPO sits on the Capital Market Supervisory Board, a unit of the SEC.

The FPO has a particular bearing on the Thai bond market in that it studies international bond markets by assessing practices and their impacts, and generates policy advice for the regulatory authorities overseeing the domestic bond market.

2. Public Debt Management Office

The MOF also houses the PDMO, which was established in 1999 as the main office responsible for public debt policies, guidelines, and management strategies. Its tasks are to oversee public debt management operations, including borrowing, refinancing, and debt payments. The PDMO manages debt in accordance with relevant laws and guidelines, develops fund-raising tools for government mega-projects, and monitors financial markets with regard to public debt management and bond market development.

Of particular significance for the bond market is the function of the PDMO to regulate, supervise, and approve the issuance of THB-denominated bonds and notes by foreign issuers under the aptly named Baht Bond concept. For more details, please refer to Chapter III.B.

The Baht Bond concept's policies and administration come under the purview of the PDMO's Bond Market Development Bureau, in particular its International Bond Market Policy Division, since the objective is to facilitate the issuance of bonds and notes by foreign issuers. Specific details of the Baht Bond concept, including credit rating requirements and issuance specifications for international financial institutions such as the International Monetary Fund and World Bank, are in the hands of other bureaus within the PDMO. For details on the Baht Bond issuance approval and regulatory processes, please refer to section F.3 in this chapter.

The Bond Market Development Bureau not only administers the Baht Bond concept but also has a direct bearing on the development of the Thai bond market. In the Public Debt Management Act Amendment B.E. 2551, 2008, Section 25/1 on Bond Market Development states that the MOF, through the PDMO, can borrow for the purpose of bond market development through the issuance of benchmark bonds, even if the fiscal situation does not require the MOF to borrow from the market (e.g., in the event of a balanced budget).⁶

In addition to the above policy measures, the Bond Market Development Bureau also supervises the Public Debt Restructuring and Domestic Bond Market Development Fund (PDDF), which was set up in 2011. PDDF responsibilities include

⁵ Description based on http://www2.mof.go.th/government_agencies.htm

⁶ Public Debt Management Office (PDMO). PDMO Lunch Talk. http://issuu.com/pdmothailand/docs/2012_lunchtalk

- efficiently and effectively manage proceeds from debt restructuring and issuance for bond market development,
- minimize government borrowing costs and default risk, and
- support sustainable bond market development.

The roles of the PDDF in supporting the development of the Thai domestic bond market are best illustrated using an excerpt from an official PDMO publication (Figure 2.1).

Figure 2.1: Roles of the Public Debt Restructuring and Domestic Bond Market Development Fund in Supporting Thai Bond Market Development

Primary Market

- Increase short-term liquidity
- Constant supply of government securities
- Financial institution and private sector have more alternative sources for short-term fund-raising

Secondary Market

- Increase turnover of government bond and corporate bond
- Promote Private Repo operation

Source: Public Debt Management Office (PDMO). PDMO Lunch Talk. http://issuu.com/pdmothailand/docs/2012_lunchtalk

3. Bank of Thailand

The BOT supervises financial institutions in Thailand under the Financial Institutions Act B.E. 2551, 2008, which covers banking operations and financial markets. The BOT was first set up as the Thai National Banking Bureau. The Bank of Thailand Act was promulgated on 28 April 1942, vesting the BOT with responsibility for all central banking functions. The BOT commenced operations on 10 December 1942.

The Bank of Thailand Act B.E 2485, 1942 was later amended by the Bank of Thailand Act (No. 4) B.E. 2551, 2008 to emphasize the BOT's social responsibilities, create a mechanism to guard against economic crisis, and establish a decision-making process that ensures good governance and transparency. Thus, the public is now able to audit the BOT to increase its understanding of the central bank's operations. The Bank of Thailand Act (No. 4) B.E. 2551, 2008 came into force on 4 March 2008 and prescribes the BOT's major roles and responsibilities as follows:⁷

⁷ See <https://www.bot.or.th/English/AboutBOT/RolesAndHistory/Pages/RolesAndResponsibility.aspx>

- (i) print and issue banknotes and other security documents;
- (ii) promote monetary stability and formulate monetary policies;
- (iii) monitor foreign currency reserves;
- (iv) provide banking facilities for the government and act as the registrar for government bonds;
- (v) provide banking facilities for financial institutions;
- (vi) supervise and examine financial institutions;
- (vii) establish (or support the establishment of) a payment system;
- (viii) manage the country's foreign exchange rate under the foreign exchange system, and manage assets in the currency reserve according to the Currency Act; and
- (ix) control the foreign exchange according to the Exchange Control Act.

In the context of the bond market, the BOT operates auctions for government bonds and Treasury bills and notes issued by the MOF, issues BOT bonds, regulates and supervises the activities of financial institutions with regard to debt securities, conducts open market operations with financial institutions using fixed-income instruments, and approves foreign currency (FCY) bond and note issuance.

The BOT is also part of the panel of regulatory authorities that, together with the PDMO and SEC, evaluates applications from foreign issuers under the Baht Bond concept.

In addition, the BOT is the supervisory body for the Deposit Protection Agency (DPA) (see Chapter III.P) as well as the Financial Institutions Development Fund (FIDF), the contributions to which (see Chapter VI) also have a bearing on fund-raising through debt instrument issuance by financial institutions under BOT supervision (see Chapter II.M).

4. Securities and Exchange Commission, Thailand

The SEC is the most significant authority with respect to the regulations and activities of the Thai bond market. It was established under the Securities and Exchange Act B.E. 2535, 1992, on 16 May 1992. The act was amended by Securities and Exchange Act (No. 4) B.E. 2551, 2008, which came into effect on 5 March 2008.

SEC Objectives

The objectives of the SEC are to supervise and develop both primary and secondary capital markets, as well as financial- and securities-related participants and institutions. Its primary roles are to formulate policies, rules, and regulations regarding the supervision, promotion, and development of securities businesses, as well as other activities pertaining to securities.⁸ The policy objectives of the SEC in supervising and developing the Thai capital and financial markets are to

- (i) maintain fairness in the capital and financial markets,
- (ii) develop and enhance the efficiency of the capital and financial markets,
- (iii) maintain the long-term stability of the financial system, and
- (iv) strengthen the international competitiveness of the capital market.
- (v) facilitate access for business and investors to the capital market.

⁸ See <http://www.thaibma.or.th/EN/About/Background.aspx>; http://www.sec.or.th/EN/RaisingFunds/EquityDebt/Pages/Laws_Regulations.aspx; http://capital.sec.or.th/webapp/nrs/nrs_search_en.php?ref_id=72&lang=en

Organization

The SEC's organizational structure comprises three tiers of authority:

- (i) The SEC Board is responsible for policy-level regulations and oversight of the capital market's development.
- (ii) The Capital Market Supervisory Board supervises securities businesses, including day-to-day operations, public offerings, and takeovers.
- (iii) The SEC Office implements policies, inspects licensed and approved corporations and individuals, and develops financial products.

Regulations and Their Identification

Various organs of the SEC issue different regulations and notifications. The designation of such regulations and notifications identifies the respective organ of the SEC and the general area of regulation. (Prior to January 2012, the designations identified the organ, general purpose, and the responsible department within the SEC.) Tables 2.2 and 2.3 serve as quick guides for SEC identifications.

Table 2.2: Identification of Securities and Exchange Commission, Thailand Regulations—First Abbreviation

Kor.	Notification of the SEC
Tor.	Notification of the Capital Market Supervisory Board
Sor.	Notification of the SEC Office
Nor.*	Notification of the SEC Office that explains regulatory policies
Or.*	Notification of the SEC Office that prescribes other rules

SEC = Securities and Exchange Commission, Thailand.

Notes: The first abbreviation identifies the issuer within the SEC. * indicates designations that existed for regulations issued before 1 January 2012.

Source: ADB Consultants for SF1 based on the SEC website. <http://www.sec.or.th/EN/SECInfo/LawsRegulation/Pages/IntroductoryLaw.aspx>

Table 2.3: Identification of Securities and Exchange Commission, Thailand Regulations—Second Abbreviation

Thor.	Supervision (previously Broker–Dealer Supervision Department)
Chor.	Securities issuance (previously Corporate Finance Department)
Nor.	Asset management (mutual fund or private fund)
Chor.	Approval of independent professionals (previously Accounting Supervision Department)
Tor.	Provident fund registrar (since January 2012)
Kor.	Acquisitions and takeovers
Or.	Others
LorChor.	Personnel of securities issuers (since January 2012)
LorThor.	Personnel of business operators (since January 2012)
Mor.	Fees*
Dor.	Market Supervision Department (prior to January 2012)
Khor.	Licensing Department (prior to January 2012)

SEC = Securities and Exchange Commission, Thailand.

Notes: The second abbreviation identifies the general topic. * indicates that fee-related notifications may also be issued under Thor., Chor., Bor., Tor., Kor., and Or.

Source: ADB Consultants for SF1 based on SEC website. <http://www.sec.or.th/EN/SECInfo/LawsRegulation/Pages/IntroductoryLaw.aspx>

Responsibilities

The SEC's responsibilities in supervising the Thai capital market can be summarized as follows:

(a) Securities Issuance and Business Takeover

With regard to securities issuance, the SEA allows the business sector to issue and offer for sale various kinds of securities—including equities, debt instruments, and hybrid instruments—to mobilize funds from the public. The issuance and offer must be beneficial to the country's economic and social prosperity. Under the SEA, eligible equity or hybrid instrument issuance is restricted to public limited companies—including the incorporators of a public limited company who can issue and offer equities—while issuance of debt instruments can be undertaken by both public limited companies and limited companies.

With respect to takeover and change of control, the takeover sections of the SEA provide shareholders with adequate information and fair treatment.

(i) Information Disclosure

Any person shall be obliged to report the acquisition or disposition of securities (Form 246-2) to the SEC within 3 business days of taking any one of the following actions that results in the aggregated securities reaching or exceeding 5% of the total number of voting rights of the business:⁹

- (1) acquisition or disposition of securities by the person himself,
- (2) acquisition or disposition of a juristic person under Section 258 of the SEA, and
- (3) becoming or terminating a concert party.

(ii) Tender Offer

A person who acquires or holds the securities of a business up to the point at which the change in control of a business takes place must issue a tender offer to provide all securities holders with an equal opportunity to sell their securities to the offerer with sufficient time to make a decision based on accurate and complete information disclosed by the tender offerer. In addition, the securities holder must also receive adequate information and advice to assist them in making such a decision. Directors are required to make recommendations with respect to the proposal. Moreover, such a proposal must contain a recommendation statement prepared by an independent Financial Adviser.

The trigger points regarded as changes in the control of a business and which require the making of a tender offer to purchase all securities are defined at 25%, 50%, and 75% of the total number of voting rights of the business. The offer price for the tender offer must be the same for all shareholders or securities holders of

⁹ The types of securities subject to reporting are shares and convertible securities such as (i) stocks (common and preferred shares) and (ii) convertible securities (warrants, convertible debentures, transferable subscription rights, and derivative warrants).

the same class and issue of securities, and must not be less than the highest price at which the acquirer or related parties, as specified by Section 258 of the SEA Act, had acquired such securities within 90 days prior to the tender offer.

Apart from the mentioned mandatory offer, a person may also make a voluntary tender offer to purchase the securities of a business under the provision of the takeover sections of the SEA.

(b) Securities

Under the SEA, securities businesses refer to

- (i) securities brokerage;
- (ii) securities dealing;
- (iii) securities underwriting;
- (iv) investment advisory services;
- (v) mutual fund management;
- (vi) private fund management; and
- (vii) other businesses relating to securities as specified by the Minister of Finance upon the recommendation of the SEC, including securities borrowing and lending, securities financing, interdealer brokerage, and venture capital fund management.

The SEA requires all operators of securities businesses to be licensed by the Minister of Finance upon the recommendation of the SEC. Applications and screening are done at the SEC. Requirements include initial capital adequacy; a fit-and-proper capability for management, directors, and controlling shareholders; and an assessment of internal control, risk management, and supervisory systems.

In addition, the SEC supervises securities businesses according to their risks, whether they comprise financial risk, operational risk, internal control risk, customer relation risk, information technology risk, or other types of risk. The securities companies must put in place adequate operating systems and maintain sufficient ongoing capital as required, with the main objective of maintaining the stability and creditability of the whole system rather than the survival of an individual securities company.

The SEC also pays particular attention to client treatment and the structure of the securities businesses in fostering efficiency in securities trading and maintaining competition at an appropriate level.

(c) Derivatives

The SEC approves, licenses, and supervises derivatives businesses—as well as the derivatives exchange, clearing house, and business operators—in accordance with the Derivatives Act B.E. 2546, 2003, which came into effect on 6 January 2004.

(d) Investment Management

Investment management businesses offer an important alternative investment vehicle for investors, with the advantage of risk diversification and the employment of professionals who are experts in investment. Investment management vehicles include mutual funds, private or discretionary funds, and provident funds.

The SEC classifies mutual funds into two types based on whether they are offered to retail investors or to Accredited Investors, also known as professional investors under Thai regulations, who are allowed to invest in unrated bonds or non-investment grade debt instruments without limit on the investment proportion.

Investment management businesses are entrusted with the assets of public investment, and the SEC conducts stringent supervision to ensure such businesses are knowledgeable and capable of performing their fiduciary duties in managing client assets with honesty and integrity, and to the utmost benefit of investors.

(e) The Exchanges

Under the SEA, the establishment of any organized securities trading center requires a license from the SEC. There are four securities exchanges in the Thai capital market, comprising two stock exchanges, the SET and Market for Alternative Investment (MAI); one bond exchange, TBX; and one derivatives exchange, the Thailand Futures Exchange (TFEX).

(i) Stock Exchange of Thailand

The SET was established in 1975 under the Securities Exchange of Thailand Act B.E. 2517, 1974. Its members are securities companies. The operation of the SET is now governed by the SEA. Securities trading on the SET is in scripless form and is settled between brokers and custodian accounts. Physical securities must be converted into scripless form prior to trading.

(ii) Market for Alternative Investment

The MAI, a subsidiary of the SET, commenced operations on 21 June 1999. The MAI's main objectives are to create new fund-raising opportunities for small and medium-sized enterprises, as well as to provide a greater range of investment alternatives for investors.

(iii) Thailand Bond Exchange

TBX, also a subsidiary of the SET, was launched on 26 November 2003. Its main role is to support the secondary market for bond trading. As the majority of bond trading is conducted OTC, TBX's objective is to expand bond activities to individual investors.

(iv) Thailand Futures Exchange

TFEX, another subsidiary of the SET, was established on 17 May 2004 as an exchange for the trading of derivatives products. TFEX's trading method centers around electronic trading. All orders and quotes are entered into a central order book where they are automatically sorted by type, price, and entry time. Settlement in TFEX is through an electronic trading and clearing platform using NASDAQ OMX technology.

(f) Unfair Securities Trading Practice

One of the principal tasks of the SEC is to ensure the integrity of Thai securities and the capital market. This is achieved through inspections of markets and market participants, as well as the setting and enforcement of rules on securities trading practices.

(i) Inspection

In order to maintain confidence and fairness in the capital market, the SEC closely monitors securities companies and other entities under its supervision. The SEC's inspection program covers regulated entities on a routine basis, performing risk assessments based on previous inspections and reports, as well as inspections triggered by a complaint. If regulated entities fail to comply with rules and regulations, the SEC will pursue the matter through legal proceedings. When there are reasonable grounds to suspect that there is an offense against provisions under the SEA, SEC officers are empowered to conduct on-site inspections at the premises of regulated entities or any other persons or locations that possess or hold relevant information, documents, or evidence in relation to the offense. The investigative powers under the act are sufficient for the SEC to obtain all information necessary for the investigation. Offenses include, among others, insider trading, price manipulation, false or misleading disclosure, operating a securities business without a license, and fraud by company executives.

To avoid unfair securities trading practices, the SET is the frontline regulator responsible for real-time surveillance of securities trading. The SET's responsibilities include monitoring unusual volumes or prices of listed securities, demanding updated statements from listed companies, and conducting a preliminary review before submitting the case to the SEC.

(ii) Enforcement

The SEC takes strict enforcement action against wrongdoers in terms of both administrative and criminal sanctions. Where there has been noncompliance, the SEC has the power to issue notices for rectification, warning, probation, and either suspension of approval for a specified period of time or revocation of approval. These administrative sanctions, together with criminal sanctions, not only ensure compliance with the law, but also raise the standards of operators and approved persons in the capital market by making them conduct their business prudently.

In cases of offenses that do not have significant or widespread impacts, a settlement can be reached by the payment of fines. The imposition of a fine is considered by the Settlement Committee, which is appointed by the Minister of Finance. In this regard, the SEC acts as a coordinator for the Settlement Committee, which comprises representatives of the BOT, FPO, and Royal Thai Police. The fine will be remitted as revenue to the state.

In cases of offenses that have significant impacts on the public, those that cannot be fined by the Settlement Committee, or those in which the offenders refuse to

pay the fine imposed, the SEC will file criminal complaints with an inquiry official from either the Department of Special Investigation or the Royal Thai Police for further investigation and legal proceedings.

The SEC has no power in pursuing legal civil proceedings to claim compensation on behalf of investors; therefore, investors must pursue civil legal proceeding on their own accord. However, if investors have suffered damages or have disputes with intermediaries (e.g., securities firms, selling agents of foreign shares, mutual fund supervisors, private fund custodians, and derivatives business operators) for breach of contract or noncompliance with securities law, provident fund law, or derivatives law; or any notifications prescribed by the SEC Board, Capital Market Supervisory Board, SEC Office, SET, or Thailand Futures Exchange, they may apply for arbitration to settle their disputes.

(g) Trust Business

Commercial banks, financial institutions created by other specific laws, and legal entities as specified by the SEC may apply for approval to undertake trust business. In granting an approval, the SEC shall consider the applicant's qualities in relation to their financial condition, operating systems, and other qualifications as stipulated by the SEC.

5. Thai Bond Market Association

In November 1994, the Bond Dealers Club was set up as the secondary market for debt securities. In April 1998, it was upgraded to the Thai Bond Dealing Centre (TBDC) after being granted a bond exchange license by the SEC.

The goals of TBDC were to provide an environment for fair and secure trading, monitor trading, and disseminate information on the secondary bond market. It also began to function as a self-regulatory organization (SRO) and implemented a number of standards and conventions for bond trading. Over time, TBDC expanded its functions and took an active role in various areas of bond market development.

In December 2004, the Bond Market Development Committee, which is chaired by the Minister of Finance, initiated a major reform of the Thai bond market. One of the measures was to centralize the trading platform at the SET, while TBDC as an institution would remain and expand its functions as the SRO and information center for the bond market. Under this policy, TBDC sold its newly developed electronic trading platform to the SET in 2005. To refocus on SRO functions and serve as an information center, TBDC, with support from the SEC, changed its status and was granted the license of a securities-related association under the SEA and was renamed the Thai Bond Market Association (ThaiBMA) on 8 September 2005.

In addition to its regulatory functions, ThaiBMA also acts as a bond pricing agency, providing model yield and pricing data for the mark-to-market purposes of investors such as mutual funds.

6. Stock Exchange of Thailand

The SET acts as an SRO and market operator for the exchange market in Thailand, including for debt securities listed on its main board and on TBX. In this capacity, the SET sets regulations for its members and the listing and trading rules for the market as a whole.

E. Securities Issuance Framework

Principally, the SEC approves all issuances of securities in Thailand, including debt securities (debentures). The securities issuance framework is well summarized on the SEC website (shown in the box below). For more details on the securities issuance regulatory processes relevant for bonds and notes, please refer to section F in this chapter.

The securities issuance framework comprises regulatory processes (actual approval procedures) for each type of security, with a larger number of types of debt securities and specific activities related to their issuance and approval.

Box: Securities Issuance Framework in Thailand

Securities Issuance	
-	Approval of Securities Offering
-	General Provisions for Securities Offering
-	Shares Offering
-	Issuance and Offering of Equity by Foreign Issuer
-	Issuance and Offering of Equity Crowdfunding (crowdfunding)
-	Debentures Offering
-	Domestic Debenture
-	Plain Debt Securities
-	Structured Debentures
-	Structured Notes or Debentures imposing Obligations on Holders issued by Financial Institutions
-	Securitization
-	Basel III subordinated debt
-	Foreign Currency Debentures
-	Overseas Debenture
-	Foreign Issuer Debenture
-	SUKUK Offering
-	Real Estate Investment Trust
-	Private Equity Trust
-	Application for and Approval of offer for sale of units of Infra structure trust
-	Convertible Securities Offering
-	Convertible Debenture
-	Warrant
-	Transferable subscription right
-	Derivatives Warrant
-	Others Securities Issuance
-	Exchange Traded Options
-	Beneficial on Underlying Securities
-	Depository Receipt
-	Others
-	Approval/Disclosure/After Sell Duties for ESOP
-	Approval/Disclosure/After Sell Duties for ESOP of Foreign Companies
-	Filing of the registration statement and the draft prospectus
-	Lodgment Registration Statement for debenture issuance pursuant
-	Registration Statement for SUKUK
-	Filing the registration statement
-	Filing the draft prospectus and distribution of the information before selling of securities
-	Governance of publicly traded company pursuant to chapter 3/1
-	Company exempt from chapter 3/1
-	Related parties transaction
-	Acquisition or dispose of asset
-	Report on the interest of director, executive and related person
-	COMPANY SECRETARY/DOCUMENT STORAGE
-	After Sell Duties
-	Securities Selling Report
-	Securities Settlement and Securities Registrar
-	Reports of securities holdings
-	Disclosure of financial position and business operation of the company
-	Report in accordance with section 57
-	Others
-	Subscription and Underwriting of securities
-	Fees
-	Others

Source: Securities and Exchange Commission, Thailand. Securities Issuance. http://capital.sec.or.th/webapp/nrs/nrs_search_en.php?ref_id=72&lang=en

In addition to the approval of securities offering, the SEC framework also includes provisions for the necessary filing and processing of an application, and for reporting duties after a securities offering has been completed.

Those processes particularly relevant for the application, approval, and reporting for debt securities are explained in greater detail in the following section.

F. Securities Issuance Regulatory Processes

The SEC governs the issuance of securities, including debt instruments, in the Thai market. At the same time, should a nonresident issuer, which in Thai regulations and market practice is referred to as a foreign issuer, wish to issue debt securities in Thailand, both the BOT and PDMO would play a role in the approval process. The BOT also needs to approve the issuance of bonds or notes denominated in a foreign currency.

1. Regulatory Processes by Corporate Issuer Type

Thai regulations distinguish between domestic and foreign issuers, but there is generally no distinction between normal corporate issuers and financial institutions, unless a financial institution intends to issue a bond or note to satisfy capital requirements. Additional approvals need to be taken for issuers planning to issue bonds or notes in foreign currencies.

Table 2.4 provides an overview of these regulatory processes by corporate issuer type. In order to make the issuance processes more comparable across ASEAN+3 markets, the table features common issuer type distinctions that are evident in regional markets. Not all markets will distinguish all such issuer types. Sovereign issuers are typically exempt from corporate issuance approvals but, at the same time, may be subject to different regulatory processes.

Table 2.4: Regulatory Processes by Corporate Issuer Type

Type of Corporate Issuer	SEC	BOT	PDMO	ThaiBMA
Resident issuer				
Resident nonfinancial institution issuer	X			X
Resident financial institution issuer ^{a, b}	X	X ^b		X
Resident issuer of FCY bonds and notes	X	X		X
Nonresident issuer				
Nonresident nonfinancial institution issuer	X	X ^c	X	X
Nonresident financial institution issuer	X	X ^c	X	X
Nonresident issuer of FCY bonds and notes	X	X		X

BOT = Bank of Thailand; FCY = foreign currency; PDMO = Public Debt Management Office; SEC = Securities and Exchange Commission, Thailand; ThaiBMA = Thai Bond Market Association.

^a Resident financial institutions in Thailand include branches of foreign financial institutions that fall under the supervision of the BOT.

^b Financial institutions also require approval from the BOT if a bond is issued for capital requirements.

^c The BOT does not approve issuance as such, but instead the use of THB-denominated issuance proceeds from a Special Nonresident Baht Account.

Source: ABMF SF1 with inputs from the BOT, PDMO, SEC, and ThaiBMA.

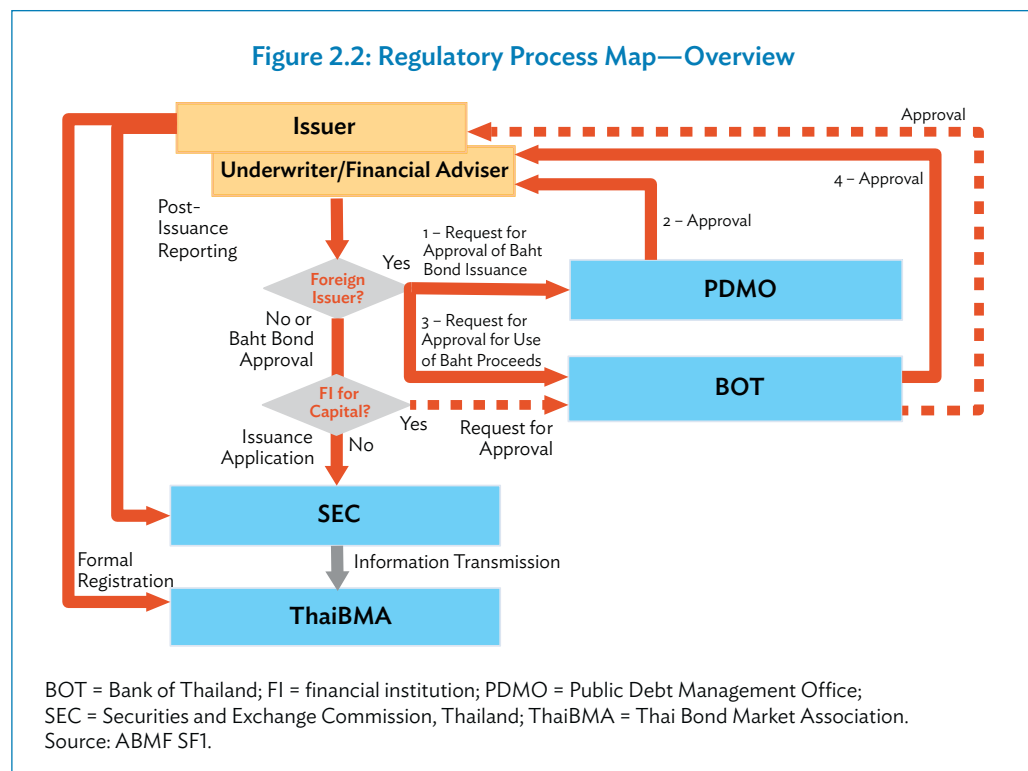
2. Regulatory Process Overview

All proposed issuances of bonds and notes in the Thai market require the prior approval of the SEC. There is a major distinction in the approval process and related requirements between public offers and private placements. For more details, please refer to sections F.4 and 5 in this chapter, respectively.

Foreign issuers may issue bonds and notes in Thailand in both Thai baht and foreign currencies. Bonds and notes denominated in Thai baht are subject to approval by the PDMO prior to submitting an application for approval to the SEC under the Baht Bond concept prescribed by the MOF. The PDMO does not distinguish between issuance approvals for public offers or private placements. Section 3 below gives further details on the application and approval process.

The approval of the BOT is required in case financial institutions want to issue bonds and notes to address capital requirements.

The regulatory process map shown in Figure 2.2 is intended to help navigate the applicable regulatory processes applied to a proposed bond or note issuance in Thailand.



There is no requirement on the use of an underwriter for a bond offering under PP-AI. However, in instances where an issuer wants to appoint an underwriter, such an underwriter must be licensed by the SEC.

In addition to appointing an underwriter, an issuer may appoint another person to help in preparing and submitting the offering circular to the SEC; this party is called a Financial Adviser.¹⁰ However, in practicality, most underwriters also hold the license of a Financial Adviser; in such cases, the underwriter and the Financial Adviser will be the same party.

At the same time, even if an issuer of bonds and notes appoints an underwriter or a Financial Adviser, the issuer may actually file the necessary documents directly with the SEC.

3. Issuance Process for Nonresident (Foreign) Issuer

In the event that the issuer is a nonresident (foreign) entity, THB-denominated bond or note issuance may only be undertaken utilizing the so-called Baht Bond process, which is administered by the PDMO and subject to periodic application and approval.

Nonresident issuers are defined in the SEA (in the description of foreign issuers) as “a unit or organization of [a] foreign government, international organization, and juristic person under the law of a foreign jurisdiction.” More specifically, nonresident issuers are defined under a Ministry of Finance Notification for the PDMO as

- (1) international financial institutions (e.g., ADB, International Finance Corporation, and International Monetary Fund);
- (2) foreign governments;
- (3) financial institutions of foreign governments;
- (4) juridical entities that have been established under foreign laws; and
- (5) special purpose vehicles.

The objective of the Baht Bond process is to control the maximum amount of THB-denominated bond or note issuances by nonresidents.

The PDMO presently invites issuers to submit an application during three periods in a calendar year. Currently, submission dates can be any working days in March, July, and November. An approval is preceded by consultations with the BOT and SEC.

Following PDMO approval, the issuer may issue the authorized amount within a 9-month time frame, counted from the date of submission of the Baht Bond issuance application. If a foreign issuer is granted an approval but does not issue any bonds or notes in the authorized period, PDMO may penalize the issuer.

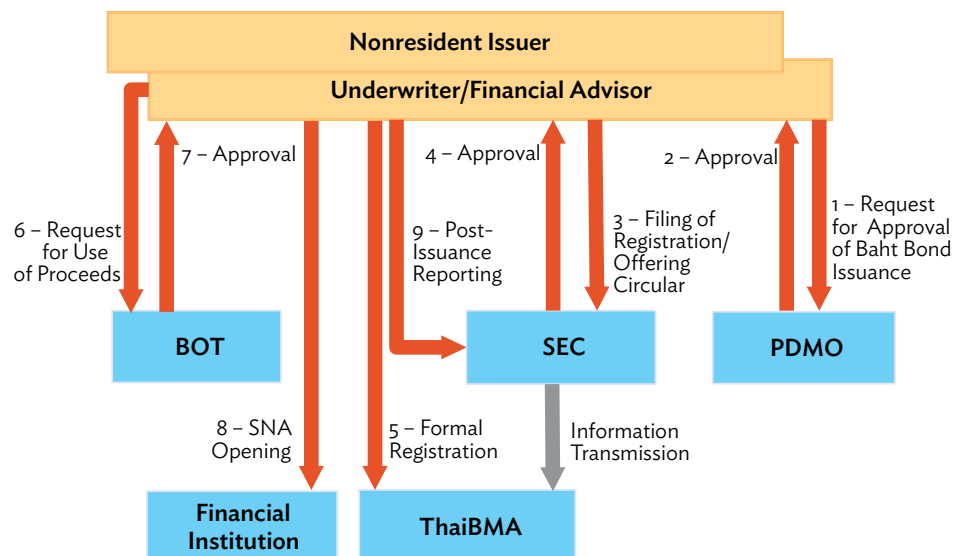
PDMO's regulatory process for Baht Bonds is described in more detail in an official document – amended from time to time – available on the website of the MOF.¹¹

Successful PDMO approval is followed by the regulatory process of PP-AI approval from the SEC (Figure 2.3).

¹⁰ A Financial Adviser is a legal entity licensed by the SEC; the license is different from that of an underwriter. The duties of a Financial Adviser include the preparation and submission of an offering circular to the SEC. Under PP-AI, the SEC does not require issuers to appoint a Financial Adviser. However, if an issuer does appoint one, the Financial Adviser must be licensed by the SEC.

¹¹ See http://www.pdmo.go.th/upload/ebook_img/Baht_Denominated_Bond_%20in_Thailand_Version_2014.pdf

Figure 2.3: Regulatory Process for Issuance by Nonresident (Foreign) Issuer



BOT = Bank of Thailand; PDMO = Public Debt Management Office; SEC = Securities and Exchange Commission, Thailand; SNA = Special Nonresident Baht Account; ThaiBMA = Thai Bond Market Association.

Source: ABMF SF1.

Under current SEC regulations, a nonresident (foreign) issuer needs to appoint a contact person in Thailand. The purpose of the contact person is to field questions or requests directed at the issuer, and to disseminate information provided by the issuer to bondholders in Thailand.

Both MOF and SEC regulations state that “[the issuer] shall appoint a representative in Thailand to act as a person during the tenure of the bond or note in order to receive letters, orders, notices, and documents, or to contact the relevant authorities.”¹² Contact persons do not have fiduciary or fiscal responsibilities under the law.

The duties of a contact person have traditionally been carried out by law firms, but could also be performed by other professional firms, banks, or financial institutions.

The following steps need to be observed by a nonresident (foreign) issuer when applying for a THB-denominated bond or note issuance under the Baht Bond process, whether the intention is to offer the bond or note to the public or under PP-AI.

¹² Securities and Exchange Commission, Thailand. Securities and Exchange Act B.E. 2535. <http://www.sec.or.th/EN/SECInfo/LawsRegulation/Documents/actandroyal/1Securities.pdf>

Step 1—Letter of Application of Baht Bond Issuance to the Public Debt Management Office

The issuer or underwriter submits an application letter, together with relevant documents, to the Minister of Finance (to the attention of the PDMO). This letter of application should contain information on the

- (i) objective of fund-raising,
- (ii) type of bond,
- (iii) maturity,
- (iv) issue size,
- (v) offering method (public offering or private placement),
- (vi) timing of issuance,
- (vii) use of proceeds,
- (viii) cross-currency swap intermediaries (if applicable),
- (ix) credit rating requirement(s), and
- (x) collateral guarantee (if applicable).

The applicant issuer must provide sufficient evidence to show that it has the legal capacity to issue securities under its governing laws.

Since the issuer also needs to file an offering circular with the SEC, the applicable minimum disclosure requirements set out in Sections 69 and 70 of the SEA will need to be observed.

Step 2—Approval from the Public Debt Management Office

The PDMO, in conjunction with representatives from the BOT and SEC, will review the letter of application and supplementary documents. The PDMO may request additional documents from the foreign issuer during its consideration process.

The PDMO will return an approval (or rejection if so warranted) within 1 month from the submission deadline. At the same time, if an issuer or their agent submits an application much earlier than one of the filing deadlines, this would result in additional waiting time since the 1-month approval time line is only calculated from one of the given submission deadlines.

At present, the PDMO should not be expected to approve note issuance through a medium-term note (MTN) program. However, Thailand has an MTN-like program for THB-denominated bonds and notes; the challenge is that the PDMO would not be able to approve the maximum issuance amount under such a note issuance program within any given period (e.g., 9 months). For more details, please refer to section E in this chapter.

There is no fee for PDMO's Baht Bond approval process.

Steps 3 and 4—Filing of Registration Statement or Offering Circular with the Securities and Exchange Commission and Approval

Once PDMO approval is obtained, the nonresident (foreign) issuer would have to follow the issuance approval process prescribed by the SEC for the respective type of issuance. For more details, please refer to the regulatory processes detailed in section F.4 and referenced in section F.5 in this chapter, respectively.

Step 5—Formal Registration with the Thai Bond Market Association

Once PDMO and SEC approvals have been obtained, the nonresident issuer or its agent has to register the bond or note with ThaiBMA. The registration of a bond or note issue with ThaiBMA is required by SEC regulations as a condition for the offering of bonds and notes in the primary market in Thailand.

Effective 1 July 2015, however, the ThaiBMA registration process was integrated with the SEC approval process. When bond and note issuers submit their filing to the SEC through the Initial Public Offering System (IPOS) (Step 3) and the issuance is subsequently approved by the SEC (Step 4), the bond and note information will be electronically submitted to the ThaiBMA registration database. The issuer can then print the official registration form already containing all required information from IPOS and submit it to ThaiBMA as the formal registration request.

The registration process is normally completed within 24 hours. It includes a one-time registration fee and an annual fee for the first 6 years of the tenure of the bond or note, which are both charged by ThaiBMA to the issuer.

Steps 6 and 7—Request for Use of Thai Baht Proceeds from the Bank of Thailand and Approval

Approval from the PDMO is a prerequisite (Step 2).

The issuer or its agent is required to obtain BOT approval for the use and remittance of Thai baht funds originating from a Baht Bond issuance. This approval is required prior to the opening of a Special Nonresident Baht Account (SNA).

Step 8—Opening of a Special Nonresident Baht Account with a Financial Institution

Approval from the BOT for the use of Thai baht proceeds from Baht Bond issuance is a prerequisite (Steps 6 and 7).

Following approval from the BOT, the nonresident issuer is required to open a designated SNA with a financial institution in Thailand, which will act as custodian of the issuance proceeds.

Issue proceeds may only be withdrawn for specific purposes, which should be in compliance with the PDMO approval. Reporting on the SNA to the BOT is to be provided by the domestic financial institution under separate regulations.

Step 9—Post Issuance Reporting to the Securities and Exchange Commission

Notification of the Securities and Exchange Commission No. SorChor. 21/2541 RE: Reporting of Securities for Sales to the Public prescribes that issuers or their underwriter (or Financial Adviser) need to submit to the SEC a post-issuance report upon the completion of the bond or note offering, in this case to Accredited Investors. The post-issuance reporting is expected to be submitted to the SEC within 15 days after the end of the month in which the sales were made (e.g., an issuance or sale in February would require reporting by 15 March).

4. Regulatory Process for Public Offers

The Securities and Exchange Act B.E. 2535, 1992, Section 33 states that all public offers of securities in the Thai market require the prior approval of the SEC, with the exception of government securities. This approval requirement includes debt securities, or debentures (official name in the law), and applies regardless of the domicile of the issuer.

Detailing the provisions in Chapter 3 of the SEA (Public Offering of Securities) for the filing of a Registration Statement and (Draft) Prospectus, together with the application for issuance approval to the SEC, is the most recent Notification of the Capital Market Supervisory Board No. TorChor 10/2556 Re: Submission of a Registration Statement for Offer for Sale of Debt Securities, promulgated on 11 March 2013. Provisions from the SEC Notification referenced here are the filing process for the offer for sale of plain debt securities and securitized debt securities.¹³

In addition to appointing an underwriter for a public offer, an issuer may appoint a Financial Adviser, as mentioned previously. If an issuer of bonds or notes appoints an underwriter or a Financial Adviser, the issuer may still actually file the necessary documents directly with the SEC.

The following steps describe the actions to be undertaken by the relevant parties in the course of the issuance application and approval process for a bond or note offered to the public.

Step 1—Filing of Registration Statement and (Draft) Prospectus with the Securities and Exchange Commission

The issuer, or its agent, files the Registration Statement and (Draft) Prospectus for the planned public offer, together with the application for the approval of such issuance, with the SEC.

The abovementioned SEC Notification prescribes the use of Form 69-Debt-PO for the Registration Statement and defines its contents further in Chapter 3, to include

- (i) a fact sheet of the offer;
- (ii) company profile;
- (iii) information relating to the subscription, underwriting, and allocation; and
- (iv) other information having an impact on an investor's decision.

In particular, the fact sheet is expected to demonstrate the essence of the debt securities, including their significant characteristics, important risk factors, and a company profile.

Form 69-Debt-PO also needs to include the minimum information disclosure requirements for issuers stipulated in Section 69 of the SEA (hence the name of the form). Section 70 prescribes additional information to be submitted in the case of an application for the issuance of debentures.

¹³ The term (Draft) Prospectus is used here as mentioned in Thai regulations, since a prospectus only becomes the official issuance document, referred to as the Prospectus, once the SEC approves issuance and the effective date is reached.

Section 69 covers

- (i) objective of the offer for sale of the securities to the public or any person;
- (ii) name of the issuing company that issues securities;
- (iii) capital of the company;
- (iv) amount and type of the securities offered for sale;
- (v) expected selling price per unit of securities;
- (vi) nature of the business;
- (vii) financial condition, business operation, and material information of the business;
- (viii) management and major shareholders of the issuing company;
- (ix) auditor regularly contacting financial institutions, and legal advisor of the issuing company;
- (x) procedures for the subscription, underwriting, and allocation of securities; and
- (xi) other information as specified in the notification of the Capital Market Supervisory Board.

Section 70 covers

- (i) rights and restrictions related to the transfer of bills or debentures;
- (ii) return on debentures and bills;
- (iii) property or other collateral used as security of repayment (if any);
- (iv) debenture holder representative (if any);
- (v) encumbrances on property of the company that issues securities in the case of unsecured securities;
- (vi) outstanding debt from previous issues of bills or debentures;
- (vii) procedure, time, and place of repayment;
- (viii) procedures for conversion of rights (if any);
- (ix) other information as specified in the notification of Capital Market Supervisory Board.

The SEC charges a registration fee for the filing of a Registration Statement (for all issuance types), which the issuer is required to pay on the submission date, in accordance with the Notification of the Office of the Securities and Exchange Commission Sorbor 28/2547 Re: Provisions on Fees for Filing Registration Statement, Permission by Registration and All Applications for Obtaining Approval.

Step 2—Approval of Registration Statement, Prospectus, and Application by the Securities and Exchange Commission

The SEC reviews the issuance application, Registration Statement and the (Draft) Prospectus, and may provide feedback as necessary. The SEC may, at its discretion, ask the issuer or its agent for additional documents or information.

The issuer or underwriter may revise and, if so, resubmit the Registration Statement as well as the (Draft) Prospectus, as may be necessary. Every revision and resubmission of the documents will restart the period toward the effective date.

The Registration Statement and the (Draft) Prospectus become effective once the issuer, or its agent, have complied with the following:

- (i) obtained approval from the SEC for the issuance;
- (ii) completed the payment of registration fee;
- (iii) adequately responded to requests for additional information from the SEC (if so specified);
- (iv) disclosed all relevant information; and
- (v) if the cooling-off period (number of days to be determined by the SEC) has lapsed.

The Registration Statement and the (Draft) Prospectus will automatically become effective after 45 days from submission if the SEC does not provide an earlier effective date. Typically, however, the SEC will issue a formal letter to inform the issuer when the Registration Statement and (Draft) Prospectus will become effective.

An issuance approval by the SEC does not carry an expiry date. However, if an issuer has not issued bonds or notes under an approval within a certain period of time (e.g., 6 months from approval date), the issuer is required to file updated information in the Registration Statement and Draft Prospectus with the SEC.

After the effective date, the issuer may commence offers for sale to the public, including marketing and advertising.

Once the SEC approves an issuance application, a corresponding dataset for the bond or note issue will be transmitted automatically to ThaiBMA's Bond Registration Information System.

5. Regulatory Process for Private Placements (PP-AI)

All offers of bonds and notes via private placement in the Thai market also require the prior approval of the SEC. There are two types of private placements in the Thai bond market: PP10 and PP-AI. However, PP10 is not widely used. Instead, this section focuses on the regulatory process specific to PP-AI issuances, which also represent the professional bond market in Thailand and act as the domestic market segment for issuances under the AMBIF.

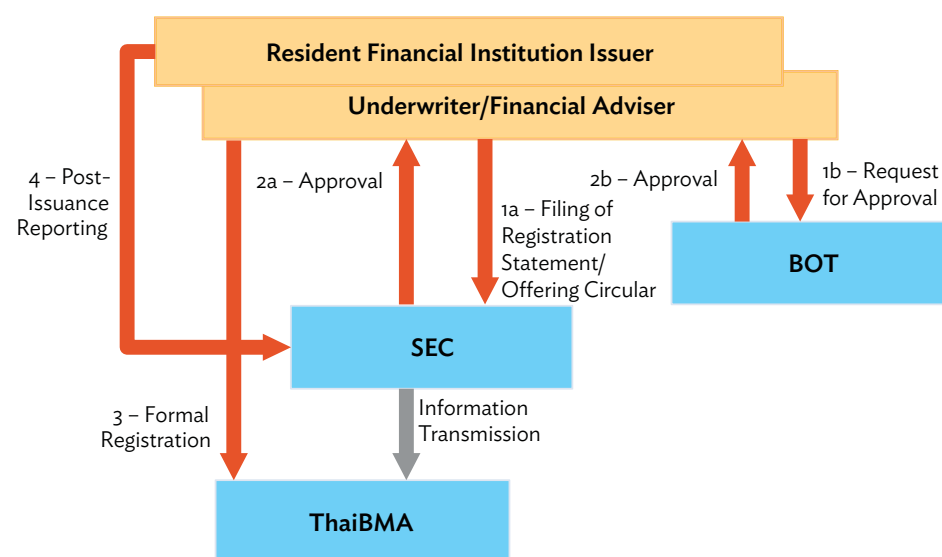
The introduction of the PP-AI regime by the SEC in July 2012 (see Chapter III.E for details) resulted in specific concessions for the issuance approval process, since PP-AI prescribes the issuance of bonds and notes to professional investors only, who are expected to be able to make their own informed investment decisions.

While the sequence and number of steps for the regulatory process of PP-AI issuances follow the description of the regulatory process involving the SEC in the previous sections, documentation and disclosure items differ. For ease of reference, the complete regulatory process of PP-AI issuances is described in detail in the AMBIF Implementation Guidelines, which are available on the *AsianBondsOnline* website and include a description of the features of the professional bond market segment in Thailand.

6. Specific Issuance by a Domestic Financial Institution

In cases where a bond or note issuance by a resident financial institution is intended to support capital requirements, the regulatory process applies whether the issuance is via public offer or under PP-AI (Figure 2.4). In such cases, a resident financial institution might file an application for issuance approval from the BOT in parallel with an application for issuance approval from the SEC (sections F.4 and 5). The additional process is described in this section.

Figure 2.4: Regulatory Process for Issuance by Resident Financial Institution Issuer (Capital Raising Only)



BOT = Bank of Thailand; SEC = Securities and Exchange Commission, Thailand; ThaiBMA = Thai Bond Market Association.
Source: ABMF SF1.

Step 1a—Filing of Registration Statement or Offering Circular with the Securities and Exchange Commission

Please refer to Regulatory Process for Public Offers (section F.4) or Private Placements (section F.5).

Step 1b—Request for Approval from the Bank of Thailand

The issuer will need to file a request for approval with the BOT's Financial Institution Applications Department. All capital instruments must meet the criteria as prescribed in the BOT's regulations on capital requirements, which comprise two main features: (i) no incentives to redeem and (ii) loss absorbency.

Step 2a—Approval of Registration Statement or Offering Circular from the Securities and Exchange Commission

Please refer to Regulatory Process for Public Offers (section 4) or Private Placements (section 5).

Step 2b—Approval from the Bank of Thailand

The BOT's Financial Institution Applications Department will review the application and supplementary documents and may, at its discretion, ask for clarification or additional information.

Provided that the application and documents are in order, the necessary information has been provided, and the review is satisfactory, the Financial Institution Applications Department will issue a letter of approval for the bond or note issuance.

There is no fee charged by the BOT for this approval process.

Step 3 Onward—Formal Registration and Post-Issuance Reporting

Once SEC and BOT approvals have been obtained, the resident financial institution has to follow the subsequent regulatory process as shown in steps 5 and 9 in section F.3.

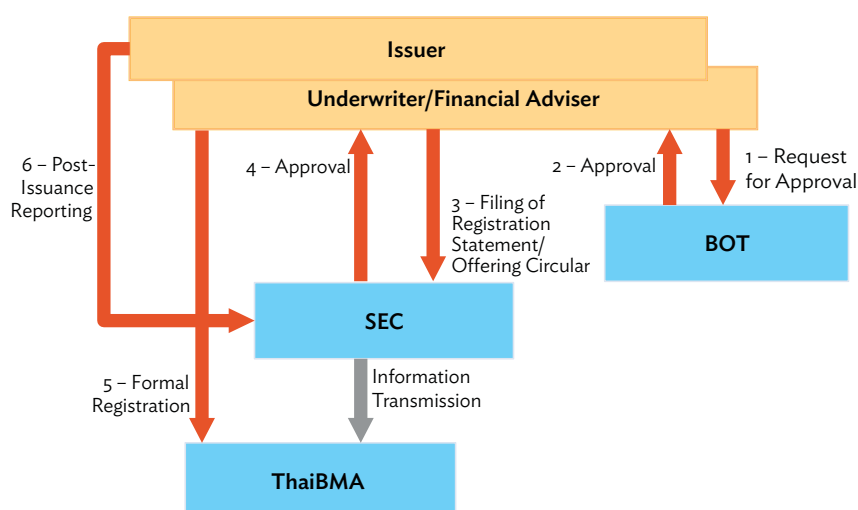
7. Issuance Process for Foreign Currency Bonds and Notes

The issuance of bonds and notes in currencies other than Thai baht, such as US dollars, is possible but not common in the Thai market. In market terminology, bonds and notes issued in a foreign currency are generally referred to as FCY bonds. Only a few FCY bonds have been observed in the Thai market in recent years. FCY bonds issued in Thailand are subject to issuance approval from the SEC and BOT, and are required to be registered with ThaiBMA (unless offered outside Thailand only).

This section, including Figure 2.5, describes the process specific to issuances in a foreign currency as a matter of reference only. This process applies regardless of whether a bond or note is issued as a public offer or under PP-AI.

FCY bonds from noncorporate issuers, such as foreign governments or government-linked entities, may also be subject to SEC approval and additional approvals. However, this document is focused on the regulatory process for corporate issuances only.

Figure 2.5: Regulatory Process for Foreign Currency Issuance



BOT = Bank of Thailand; SEC = Securities and Exchange Commission, Thailand; ThaiBMA = Thai Bond Market Association.
Source: ABMF SF1.

FCY bonds and notes require the prior approval of the BOT, in addition to the approval process for PP-AI issuances prescribed by the SEC. There are no distinctions by issuer type in the approval process for FCY bonds.

Step 1—Request for Approval from the Bank of Thailand

The issuer or underwriter (Financial Advisor) will need to file a request for approval with the BOT's Foreign Exchange Administration and Policy Department.

The application needs to contain detailed information on intended remittances of FCY proceeds.

Step 2—Approval from the Bank of Thailand

The BOT's Foreign Exchange Administration and Policy Department will review the application and supplementary documents, and may, at its discretion, ask for clarification or additional information.

Provided that the application and documents are in order, the necessary information has been provided, and the review is satisfactory, the BOT's Foreign Exchange Administration and Policy Department will issue a letter of approval for the bond or note issuance.

There is no fee charged for this BOT approval process.

Step 3 Onward—Filing of (Draft) Offering Circular with the Securities and Exchange Commission

Once BOT approval is obtained, the resident issuer must follow the issuance approval process prescribed by the SEC for the intended type of issuance. For more detail, please refer to the relevant regulatory process above.

G. Continuous Disclosure Requirements in the Thai Bond Market

Continuous disclosure requirements for bonds and notes issued in Thailand are prescribed by the SEA, and further detailed in SEC Notifications. Distinctions are made between public offers of bonds or notes and issuance via private placements.

1. Public Offers

The key disclosure document for bonds and notes offered to the public is the Prospectus. Once the SEC approves a public offer, the information in the Prospectus is required to be updated on an annual basis. This includes material information, including risk factors and planned activities of the issuer, as well as the provision of an audited financial statement. The updated information may be incorporated into the Prospectus by reference (e.g., by making available a website or designated filing place where retail investors may easily obtain the latest information).

In case the issuer is a company listed in Thailand, the issuer will be subject to the rules for the disclosure of financial and other material information under the listing rules of the SET or its subsidiaries.

The issuer is also required to file the latest audited financial statement with the SEC on an annual basis. If the issuer is a foreign entity, the filing of the audited financial statement may follow the same intervals as filings to applicable regulators in the home market of the issuers, but should not exceed 180 days since the end of the financial year.

In line with the functions of ThaiBMA as the Bond Information Center and the SRO for the OTC market, the original Prospectus for a public offer of bonds or notes and the continuous disclosure information must also be filed with ThaiBMA upon submission to the SEC. ThaiBMA provides these documents in the language they are published—typically in Thai—on its website for investor information.

2. Private Placements

The key disclosure document for a private placement is the Information Memorandum, or Offering Memorandum, which contains provisions agreed among the parties involved—issuer, investor, and intermediaries—on terms and conditions, governing law and jurisdiction, as well as relevant supporting documentation and disclosure items.

Continuous disclosure for the offering of bonds or notes through a private placement is mandated by Section 56 of the SEA and the Notification of the Capital Market Supervisory Board No. TorChor 44/2556 Re: Rules, Conditions and Procedures for Disclosure regarding Financial and Nonfinancial Information of Securities Issuers. The issuer of a PP-AI is required to file an audited financial statement with the SEC at the same time they are required to file such a statement with their lead regulator.

H. Self-Regulatory Organizations in the Thai Bond Market

The following are SROs in the Thai bond market:

1. Thai Bond Market Association

ThaiBMA is an SRO licensed to run an efficient market, govern market practices and participants in the secondary market, and act as an information center for the domestic bond market. It is responsible for developing the market, establishing market conventions and standards, and acting as a bond pricing agency. It also provides a forum for market professionals to conduct a practical dialogue with policy bodies, regulatory authorities, and market institutions in order to move toward a more mature and sophisticated Thai bond market.

(a) ThaiBMA Members

SEC regulations require that all financial institutions having a debt securities trading license must be ThaiBMA members. This is to ensure that all market participants comply with same rules and standards defined by the SRO.

Membership in ThaiBMA is classified into one of three types, each subject to different membership fees and requirements:

- (i) An ordinary member is a financial institution that has a debt-trading license (dealer).
- (ii) An extraordinary member is a company that has an inter-dealer broker license.

- (iii) An associate membership is provided for a dealer that has a monthly average trading value in the past year of less than THB100 million per month.

As of June 2016, ThaiBMA featured 53 members, comprising 14 Thai commercial banks, 6 branches of foreign commercial banks, and 33 securities companies.¹⁴

(b) Roles and Functions of the ThaiBMA as a Self-Regulatory Organization

ThaiBMA oversees and monitors the conduct of its members to ensure fairness and efficiency in debt securities trading. It is committed to retaining the confidence of its membership, regulators, and investors. Its functions as an SRO include the following:

- (i) perform market monitoring and surveillance to ensure that all trading activities comply with relevant laws and regulations, and act as the front line in detecting any unfair trading practices;
- (ii) establish the Ethics and Code of Conduct for members and traders;
- (iii) issue rules and guidelines regarding debt securities trading and good market practice;
- (iv) conduct bond trader examination and registration, and provide ongoing education to enhance bond trader professionalism; and
- (v) determine enforcement procedures to penalize those who do not comply with regulations.

The SEC and ThaiBMA signed a memorandum of understanding on bond market supervisory cooperation in May 2007. In addition, SEC regulations require all dealer firms to appoint a trader registered with ThaiBMA in bond trading. To qualify for ThaiBMA registration, these personnel must pass a bond trader examination administered by ThaiBMA. This was established to ensure that registered traders have adequate knowledge of the relevant rules, regulations, and ethics provisions, as well as adequate knowledge of the functioning of the Thai bond market at large.

2. Stock Exchange of Thailand

The SET is a juristic entity set up under the Securities Exchange of Thailand Act B.E. 2517, 1974. In addition to its function as the licensed exchange operator, it fulfills the role of an SRO by establishing and governing the listing, trading, surveillance, and disclosure obligations and practices of its participants.

For more details on the underlying regulations and trading and disclosure rules set by TBX, please refer to Chapter II.J.

I. Thai Bond Market Association Rules Related to Trading, Reporting, and Registration

As mentioned above, ThaiBMA sets the rules on trading, reporting, and registration of bonds and notes. ThaiBMA issues these rules through Notifications of the Board of Directors of ThaiBMA.

¹⁴ ThaiBMA. Dealer Members. <http://www.thaibma.or.th/EN/Trader/DealerMembers.aspx>

Such notifications are typically categorized into one of the following governance areas:

- (i) membership;
- (ii) trading, reporting, and maintaining trading records;
- (iii) qualification and registration of traders;
- (iv) registration of debt instruments;
- (v) compliance practices by members; and
- (vi) bond information services.

The most significant topics of notifications include the following:

- (i) standard of practices for the bond market,
- (ii) improper trading practices of members,
- (iii) reporting requirements of debt instrument trading,
- (iv) registration of debt instruments, and
- (v) sanctions on violations of trading report requirements.

For more details on the historical and organizational development of ThaiBMA, please refer to Chapter II.D. ThaiBMA is not an exchange, but it plays a role very similar to that of a profile listing place for bonds and notes through the registration of debt instruments.

J. Thailand Bond Exchange Rules Related to Bond Listing, Disclosure, and Trading

TBX's rules pertaining to bond listing, disclosure, and trading include the Notification of the Stock Exchange of Thailand on Trading of Debt Instruments, 2003 and the Regulations of the Stock Exchange of Thailand on Listing of Debt Instruments as Listed Securities, 2004. Both can be found on the SET website.

K. Market Entry Requirements (Nonresidents)

1. Foreign Issuers

Nonresident (foreign) issuers may issue bonds in Thailand. The issuance of THB-denominated bonds and notes is subject to approval by the PDMO under the rules of the Baht Bond concept, which specifies an overall cap for issuances per fiscal year. The Baht Bond regulatory process also includes an approval by the BOT for the use of Thai baht proceeds upon issuance (see section F.3 in this chapter for details). The issuance of bonds and notes denominated in a foreign currency is subject to approval by the BOT under the central bank's foreign exchange regulations.

In cases where a nonresident issuer offers debt securities for sale to Thai investors, the issuer will need to appoint a so-called contact person in Thailand to distribute information on the issuer and the bond or note sale, and to be available for any queries from investors. For more details, please refer to Chapter III.G.

2. Foreign Investors

Nonresidents may invest in Thai Government Bonds (TGBs) and Baht Bond issuances by foreign corporates without any restrictions. Investments in TGBs are also eligible for foreign exchange hedging with authorized financial institutions in Thailand.

Foreign investors may also invest freely in corporate bonds and notes issued in Thailand. The investment in bonds and notes issued by domestic financial institutions is subject to an aggregate limit of THB10 million per financial institution for each group of nonresident investors.

Transfers in Thai baht relating to investments in TGBs and corporate bonds and notes must comply with the relevant foreign exchange regulations governing Nonresident Baht Accounts. For more details, please refer to section M.3 in this chapter.

L. Market Exit Requirements (Nonresidents)

1. Foreign Issuers

There are no specific market exit requirements for foreign issuers. The required funds for redemption of (or interest payments on) bonds and notes issued in Thailand must be credited to the issuer's SNA that was set up for the initial deposit of the issuance proceeds.

Foreign issuers may appoint the Thailand Securities Depository (TSD) or a financial institution to act as paying agent on their behalf and pay principal and interest out of the issuer's Nonresident Baht Account as the operating cash account. For that purpose, the original approval for the use of Thai baht proceeds granted by the BOT (see section F.3 in this chapter) permits the issuer to maintain an end-of-day balance in the Nonresident Baht Account of more than THB300 million.

2. Foreign Investors

There are no market exit requirements for foreign investors. Upon the sale of debt securities, foreign investors are free to repatriate proceeds, including interest and investment gains. Since certain limitations exist on the outstanding balance in a foreign investor's NRBS, it is advisable in any case to either repatriate or reinvest said proceeds within the stipulated time frame. For more details on prevailing regulations, please refer to section M in this chapter.

Pursuant to the prevailing real demand principle, foreign exchange transactions need to be accompanied by supporting documents showing evidence of an underlying business transaction (e.g., the sale of debt securities). Such supporting documents need to be submitted to an authorized financial institution in Thailand when instructing the foreign exchange transaction. From a practical perspective, the custodian (or broker) of the foreign investor will already have such supporting documents on file when executing the foreign exchange transaction.

M. Regulations and Limitations (Nonresidents)

There are a few notable limitations to be observed, particularly by foreign investors, with regard to the investment in securities and the maintenance of related Thai baht cash accounts and liquidity.

The legal basis for foreign exchange controls in Thailand is derived from the Exchange Control Act B.E. 2485, 1942 and Ministerial Regulation No. 13 B.E. 2497, 1954 issued under the same act. These laws and regulations set out the principles relating to foreign exchange administration.

Foreign exchange controls were issued under the act with the following major objectives:

- (i) centralize the foreign exchange of the country,
- (ii) channel foreign exchange for the public benefit,
- (iii) monitor capital outflows, and
- (iv) stabilize the value of the Thai baht.

In addition, section M.4 in this chapter details one regulation that may also be relevant for nonresident issuers that are financial institutions, but which, in fact, is not limited to nonresident issuers.

1. Regulations on Foreign Currency

Foreign currencies can be brought into Thailand without limit. Any person receiving foreign currencies from abroad is required to sell such foreign currencies to an authorized financial institution, or to deposit them in a foreign currency account with an authorized financial institution within 360 days from the receiving date. An exception is made for foreign embassies, international organizations, and foreigners temporarily staying in Thailand not longer than 3 months.

The purchase or sale of foreign exchange, or hedging involving a foreign currency, is generally available with authorized financial institutions when a genuine underlying current or capital transaction exists.

2. Regulations on Local Currency

There is no restriction on the amount of Thai baht that may be brought into the country. A person traveling to Thailand's bordering countries, including Viet Nam, is allowed to take up to THB2,000,000 (USD55,679). For travel to all other countries, the limit is THB50,000 (USD1,392) without authorization.

3. Measures to Prevent Thai Baht Speculation

In October 2003, the BOT implemented the Measures to Prevent Thai Baht Speculation. These measures have since been further refined and relaxed across some of the prescribed types of underlying transactions and services. However, the measures with direct relevance for the investment in securities, including debt securities, remain in force:

- (i) **Measure to Limit Thai Baht Liquidity.** Domestic financial institutions are limited to provide Thai baht liquidity (e.g., in the form of a swap or overdraft facility) to a nonresident in the case of payments undertaken without underlying transactions (real demand principle). The total outstanding balance provided by each financial institution shall not exceed THB600 million (USD16.7 million) per group of nonresidents.
- (ii) **Measure to Curb Capital Inflows.** Without underlying transactions, domestic financial institutions are limited in borrowing or undertaking transactions comparable to Thai baht borrowing from nonresidents. The total outstanding

balance executed by each financial institution shall not exceed THB10 million (USD278,400) per group of nonresidents.

At the same time, Thai financial institutions are allowed to issue THB-denominated debt securities, excluding bills of exchange, to nonresidents up to a limit of THB10 million for each financial institution.

- (iii) **Measure on Nonresident Baht Accounts and Nonresident Baht Accounts for Securities.** Nonresident Baht Accounts and Nonresident Baht Accounts for Securities are both limited to an end-of-day balance not exceeding THB300 million (USD8.4 million) per nonresident. This limit includes balances of all accounts opened by each nonresident across all domestic financial institutions in Thailand. Domestic financial institutions are not permitted to pay interest on accounts, with the exception of Nonresident Baht Accounts (time or fixed deposit) with maturities of 6 months or longer.
- (iv) **Measure on Nondeliverable Forward.** Domestic financial institutions are not allowed to undertake nondeliverable forward transactions against Thai baht with nonresidents.

With regard to (iii), the typical securities holding structure in omnibus accounts in the name of global custodians with custodian banks in Thailand, and the corresponding funding through aggregate cash accounts, may lead to challenges in complying with said regulations. This may be the case in instances of large bond interest or redemption payments. Custodian banks encourage investors to work closely with them to avoid noncompliance with the regulations.

The BOT has on previous occasions granted extensions or short-term exemptions from this requirement on a case-by-case basis, including in the event of a necessary accumulation of funds as a result of securities investment and bond or note redemption. Custodians will need to seek prior approval from the BOT.

4. Contributions to Financial Institutions Development Fund

With effect from 27 January 2012, financial institutions in Thailand are required to contribute a defined rate over all Thai baht fund-raising activities to the Financial Institutions Development Fund (FIDF) (for details, see Chapter VI).

This contribution also applies to the local branches of foreign financial institutions that issue debt instruments for fund-raising. Most significantly, this contribution also applies in the event such a foreign financial institution directly (through a head office or treasury center entity) issues debt instruments in the Thai market and onlends the Thai baht proceeds to its domestic branch. Under the prevalent BOT Notification, this funding transaction is considered an included fund-raising activity for the purpose of the regulations.¹⁵

The FIDF was established to provide financial assistance to troubled financial institutions, containing financial damages and mitigating the threat to stability of the financial institution system. While the FIDF has existed since 1985, the said contribution by financial institutions

¹⁵ Notification of the Bank of Thailand No. SorKorSor. 3/2555 Re: Stipulation of Contribution Rate, Criteria and Procedures for Remitting Contribution and Surcharge to Accrued Account to Repay the Principal of the Loan to Compensate the Loss to the Financial Institution Development Fund.

was decreed only in 2012 by Emergency Decree, in response to the financial drain on the FIDF supporting the domestic market following the devastating 2011 floods in Thailand, and the resulting economic impact, which were considered then by the World Bank as the world's fourth-costliest disaster.

N. Regulations on Credit Rating Agencies

This section covers the regulations and requirements applicable to credit rating agencies and their business operations. For the application of credit ratings in the issuance process of bonds and notes, please refer to Chapter III.O.

The SEC prescribes and governs regulations for credit rating agencies in Thailand. There is no particular distinction in these regulations for the activities of credit rating agencies in relation to the stock or bond markets. The SEC regulates credit rating agencies under the purview of its supervision of market participants.

Pursuant to the Notification of the Office of the Securities and Exchange Commission SorChor. 7/2555, 2012, Credit Rating Agencies Approved to Issue Credit Rating for Instruments Subject to Rules Concerning Issuance and Offer for Sale and Investment of Funds, credit rating agencies need to either be established under Thai law or be named specifically by the SEC if established under foreign law.¹⁶ Specific requirements for credit rating agencies established under foreign law are stated in Clause 2 of said notification.

Approval as a credit rating agency established under Thai law has been issued to Thai Rating and Information Services, now known as TRIS Rating and to Fitch Ratings (Thailand).

Under the abovementioned notification, the following credit rating agencies established under foreign law have been approved for the conduct of credit rating business operations in Thailand:

- (i) Fitch Ratings,
- (ii) Moody's,
- (iii) Rating and Investment Information
- (iv) Standard & Poor's, and
- (v) Japan Credit Rating Agency.

Additionally, as prescribed in the Notification of the Securities and Exchange Commission KorChor. 1/2555, 2012, Exclusion of Credit Rating Agency Business from Securities Business in the Category of Securities Investment Advisory, domestic or international institutions acting as credit rating agencies may not be otherwise involved in the securities business in the Thai capital market.

Bonds and notes to be listed on the SET must be rated by an SEC-approved credit rating agency.

¹⁶ See <http://capital.sec.or.th/webapp/nrs/data/6780se.pdf>



Characteristics of the Thai Bond Market

This chapter includes a definition of debt securities and their various types found in the Thai bond market, covering issuance and listing, market specific features, functions and activities of authorities, and market participants within the legal and regulatory framework detailed in the previous chapter.

Since the publication of the first ASEAN+3 Bond Market Guide in 2012, several market features have changed significantly, most notably with the introduction of the definition of Accredited Investors, the professional investor concept, and of provisions for private placements aimed at such investors. This has led to the establishment of a professional bond market, typically referred to as PP-AI. Many foreign issuers have issued THB-denominated bonds and notes, typically to swap proceeds into a foreign currency, under the Baht Bond issuance approval framework, which is supervised by the MOF's PDMO.

A. Definition of Securities

The definition of securities in the Thai market is anchored in the SEA, but also referenced in the Public Limited Companies Act and the Civil and Commercial Code, as detailed below.

1. Definition in the Securities and Exchange Act B.E. 2535, 1992

Section 4 of the Securities and Exchange Act B.E. 2535, 1992 stipulates the definition of securities to include the following:¹⁷

- (i) Treasury bills,
- (ii) bonds,
- (iii) bills,
- (iv) shares,
- (v) debentures,
- (vi) investment units which are instruments or evidence representing the rights to the property of a mutual fund,
- (vii) certificates representing the right to purchase shares,
- (viii) certificates representing the right to purchase debentures,
- (ix) certificates representing the right to purchase investment units, and
- (x) any other instruments as specified by the SEC.

Bills refer to any bill issued for raising funds from the public as specified in the notification of the SEC.

¹⁷ Footnote 12.

Debenture refers to any debt instrument or whatever name excluding bills, divided into units, each with equal value and a predetermined rate of return, issued by any company to a lender or purchaser, representing the right of the holder of such instrument to receive money or other benefit.

2. Debentures in the Public Limited Companies Act B.E. 2535, 1992

Reference to debentures and their issuance is also made in Chapter XI of the Public Limited Companies Act B.E. 2535, 1992:

CHAPTER XI Debentures

Section 145. The borrowing by the company by means of the issuance of debentures for offer for sale to the public shall be in accordance with the law on securities and stock exchange, and Section 25 shall apply mutatis mutandis.

The resolution approving the issuance of debentures under Paragraph 1 shall require the resolution of the meeting of shareholders passed by a vote of not less than three-fourths of the total number of votes of the shareholders attending the meeting and having the right to vote.

3. The Civil and Commercial Code

According to the Civil and Commercial Code Section 898, bills can be classified into three categories: (i) bills of exchange, (ii) promissory notes, and (iii) cheques. However, not every type of bill is considered to be a security under the SEA. Only bills of exchange and promissory notes described in the Notification of the Securities and Exchange Commission No. KorChor 31/2547 Re: Provisions on Characteristic of the Bills Considered as Securities shall be considered as securities and therefore regulated.

B. Types of Bonds and Notes

The types of bonds and notes evident in the Thai bond market are described below.

1. Thai Government Debt Securities

The MOF is legally authorized to act as a bond and note issuer for fund mobilization from investors and the general public to fund public expenditures such as the budget deficit, losses incurred by the FIDF, refinancing, and infrastructure funding. In 2005, the MOF revised the Public Debt Management Act B.E. 2548, 2005 to allow the government to issue government bonds and notes in order to (i) onlend to other government agencies and (ii) develop the domestic bond market.

Thai government debt securities can be classified into two main groups: Treasury bills and government bonds.

(i) Treasury bills

Treasury bills refer to debt securities with a maturity of not more than 1 year. The government conducts short-term borrowing by auction of Treasury bills with maturity

periods of 1, 3, and 6 months, and an auction size of THB2,000–THB20,000 million. Bearing no interest, they are auctioned at a discount but redeemed at par upon maturity. Treasury bills are issued in minimum denominations of THB1,000 through competitive bidding via the BOT on a weekly or fortnightly basis (typically every Monday), depending on the demand for short-term capital.

(ii) Government bonds

TGBs are generally issued for a fixed term longer than 1 year. According to the Public Debt Management Act B.E. 2548, 2005, bonds are defined as debt instruments pertaining to a long-term obligation of over 12 months. TGBs are usually denominated in units of THB1,000.

There are three groups of institutions issuing government securities: the MOF, the BOT, and SOEs.¹⁸ Other than Treasury bills, there are three types of government securities: (i) government bonds such as loan bonds and savings bonds, (ii) state-agency bonds (e.g., BOT bonds) and (iii) SOE bonds.

(a) Loan bonds

Loan bonds target institutional investors. The Thai government has issued loan bonds with maturities of between 1 year and 50 years, of which 3-, 5-, 10-, 15-, and 20-year bonds are issued as benchmark bonds to increase liquidity in the secondary market. The loan bond auction is held every Wednesday.

Since 2015, the PDMO has been issuing 5-year benchmark bonds with an auction size of THB20 billion–THB24 billion every month and 10-year benchmark bonds with an auction size of THB12 billion–THB16 billion every odd month. In addition, 15- and 20-year bonds are issued regularly to create reference rates for the domestic bond market and to match the investment portfolio of long-term investors.

Since 2008, 30-year bonds, which are aimed at insurance companies, have been issued. In 2011, the PDMO also issued a 50-year bond (the longest-dated bond ever) with a total value of THB35 billion, making Thailand the fourth country to issue a 50-year bond, joining the People's Republic of China, France, and the United Kingdom.

The main objective for issuing both types of bonds is to decrease the mismatch of insurance companies' portfolios. During the start-up period, the size of these bonds is reasonably small as part of the price-discovery process to get full market competition in the future. In the long-run, the government plans to use 30- and 50-year bonds as instruments for relatively large project funding.

On 14 July 2011, the PDMO issued a 10-year inflation-linked bond with a coupon of 1.2% and the principal amount to be repaid upon maturity.

¹⁸ Only SOE bonds that are guaranteed (both principal and interest) by the MOF are considered government bonds. In cases where an SOE bond is not guaranteed by the MOF, it shall be under the regulation of the SEC in the same manner as a corporate bond.

(b) Savings bonds

Savings bonds target retail investors. Each investor is allowed to purchase a minimum of THB10,000, with the total value purchased to be in multiples of THB10,000. For most issuances, retail investors are allowed to submit one purchase subscription for each tranche with a maximum investment of THB2 million per appointed bank. Interest on the bonds is paid at a fixed rate twice a year. While savings bonds are typically issued in scripless form, the BOT provides a choice to investors on whether they would like to receive savings bonds as physical certificates or in scripless form into their TSD account.

Eligible buyers include individuals who are Thai nationals or residents, and nonprofit institutions such as foundations, the Thai Red Cross Society, and the National Council on Social Welfare of Thailand. The savings bonds are sold through four selling agents appointed by the MOF—Bangkok Bank, Krung Thai Bank, Kasikorn Bank, and Siam Commercial Bank—while the BOT is responsible for supervising the sale, registering ownership, and issuing the physical bond certificate(s) if so required.

2. Corporate Bonds and Notes

Corporate bonds and notes are debt instruments issued by the private sector. Issuers may be listed or nonlisted Thai companies, including Thai subsidiaries, branches, or affiliates of regional or global corporates. Foreign corporates may also directly issue bonds or notes in the Thai market, subject to specific approvals. For more details, please refer to Chapter II.

Generally, corporate bonds and notes are traded OTC. Clearing and settlement of the vast majority of corporate bonds and notes in the Thai market is facilitated by the TSD. Bond and note transactions are prematched by telephone between counterparties and settlement occurs via the TSD's system, following a process similar to equities. However, unlike equities, settlement of bonds and notes occurs on T+2.

Corporate bonds and notes typically issued in the Thai market comprise the following:

- (i) **Medium and long-term corporate notes and bonds.** Such bonds are issued with tenors of more than 270 days.
- (ii) **Commercial paper.** Commercial paper comprises short-term debt instruments (usually with a maturity of no more than 270 days), including bills of exchange, promissory notes, and short-term debentures.
- (iii) **Structured bonds.** A structured bond is a bond that contains an embedded derivative component that
 - (a) results in the difference of total or partial repayment of the bond from a plain vanilla bond due to the underlying variables (e.g., interest rate, foreign exchange rate, price of securities, or index of underlying assets);
 - (b) has economic characteristics and risks that are not closely related to a plain vanilla bond; and
 - (c) results in a significant difference in the overall risk profile and pricing compared to a plain vanilla bond.

* ADB recognizes “Korea” as the Republic of Korea.

- (iv) **Foreign bonds.** Since 2005, the MOF has allowed the issuance of THB-denominated bonds in Thailand by eligible foreign institutions, including international financial institutions, foreign governments, financial institutions of foreign governments, and foreign entities such as ADB, Japan Bank for International Cooperation, Korea* Export-Import Bank, and most recently the Government of the Lao People's Democratic Republic (Lao PDR). The issuance of THB-denominated bonds and notes by foreign issuers was subsequently extended to corporate issuers and enveloped into the Baht Bond concept supervised by the PDMO. Foreign issuers may apply for THB-denominated issuances three times per year, within an overall allocation for Baht Bond issuance set aside by the PDMO each fiscal year. The PDMO publishes on its website an information booklet on the Baht Bond concept.¹⁹ Information on foreign bonds is also available on the ThaiBMA website.²⁰
- (v) **Foreign currency bonds.** Thai legal entities have been allowed to issue bonds or notes in a foreign currency since 2010. To date, five issuers have issued such bonds. At the end of June 2016, the total outstanding amount of USD-denominated bonds stood at USD407 million and CNY-denominated bonds reached CNY126 million. Information on FCY-denominated bonds is also available on the ThaiBMA website.²¹

C. Money Market Instruments

Money market instruments are short(er)-term debt instruments issued by either the Government of Thailand or the private sector. Money market instruments are generally limited to instruments with a maturity of less than 1 year.

Money market instruments are traded in the OTC market, typically scripless, and settled in TSD.

Money market instruments in the Thai capital market can be divided into two major categories:

1. Issued by the Government of Thailand

(a) Treasury bills

Treasury bills are the main short-term instruments issued by the Ministry of Finance in the money market to address short-term funding needs (for more details, see Section B.1 in this chapter).

(b) BOT bills²²

The BOT may issue BOT bills, which are also referred to by market participants as Central Bank bills, as a practical instrument to absorb money market liquidity

¹⁹ For more details, please refer to the following link: http://www.pdmo.go.th/upload/ebook_img/Baht_Denominated_Bond_%20in_Thailand_Version_2014.pdf

²⁰ For more details, please refer to the following link: <http://www.thaibma.or.th/EN/BondInfo/Prospectus.aspx>

²¹ Footnote 19.

²² For more details, please refer to the following link: <https://www.bot.or.th/English/FinancialMarkets/MonetaryOperations/BOTBond/Pages/default.aspx>

as part of its open market operations. BOT bills are typically issued via auction with maturities of 14 days, 1 month, 3 months, and 6 months. Monthly auctions are also held for 1-year BOT bills. Both multiple price competitive auction and noncompetitive bidding auction methods are used. For more details, please refer to Section E in this chapter.

2. Issued by the Corporate Sector

(a) Promissory notes

Promissory notes were bearer instruments issued by banks and other financial institutions on a discounted basis with tenures ranging from 1 month to 1 year. Promissory notes are no longer evident in the Thai market.

(b) Bills of exchange

Bills of exchange are bearer instruments mostly issued by corporates for the purpose of short-term financing (see also commercial paper). They can be drawn by individuals or banks, and are generally transferable by endorsement. The difference between a promissory note and a bill of exchange is that the latter is transferable and can bind one party to pay a third party that was not involved in its creation. There is a specific minimum amount of THB10 million per bill, except for a private placement limited to a maximum of 10 investors. Bills of exchange issued as short-term financing tend to run from 30 days to 180 days. As part of the Measures to Prevent Thai Baht Speculation, the BOT issued a Notification in 2006 that domestic financial institution debtors should no longer issue bills of exchange to foreign creditors.

(c) Commercial paper

Commercial paper refers to short-term unsecured notes issued by corporations with a maturity of no more than 270 days. The most common form of commercial paper tends to take the form of a bill of exchange, which are short-term, THB-denominated, interest-bearing or discounted instruments; please refer to the breakdown provided in Table 3.1. Commercial paper is issued in bearer or registered form by corporates, banks, and other financial institutions. Typical issue sizes range from THB10 million to more than THB100 million, with varied tenures of between 1 month and 270 days.

**Table 3.1: Outstanding Commercial Paper across Categories—
Value as of 29 February 2016 (THB million)**

Commercial Paper	Discounted Form	Coupon-Bearing Form	Total
Bills of Exchange	195,224.00	5,850.00	201,074.00
Short-term Debentures	19,808.00	124,889.16	144,697.16
Total	215,032.00	130,739.16	345,771.16

THB = Thai baht.

Source: Thai Bond Market Association.

D. Segmentation of the Market

To provide a better illustration of the segmentation of debt securities issued in Thailand, Table 3.2 presents the outstanding value of each type of debt securities detailed in section C.

Table 3.2: Segmentation of the Market—Outstanding Value by Type of Bond or Note
(THB million)

Bonds	Number of Issue		Outstanding Value	
	No.	% Total	Amount (THB million)	% Amount
1. Government Debt Securities	574	18.3	7,438,133.41	74.33
1.1 Treasury Bill	14	0.45	151,702.00	1.52
1.2 Central Bank Bill	43	1.37	1,698,329.00	16.97
1.3 Government Bond	52	1.66	3,799,491.54	37.97
1.4 State Agency Bond	13	0.41	1,004,618.14	10.04
1.5 State-Owned Enterprise Bond	452	14.41	783,992.72	7.83
1.6 Government Promissory Note	0	0		
2. Financial Institution Bond	912	29.07	703,168.58	7.03
2.1 Long-Term Financial Institution Bond	266	8.48	517,526.42	5.17
2.2 Financial Institution Commercial Paper	646	20.59	185,642.16	1.86
3. Corporate Bond	1,611	51.35	1,779,863.61	17.79
3.1 Long-Term Corporate Bond	739	23.56	1,619,734.61	16.19
3.2 Commercial Paper	872	27.8	160,129.00	1.6
4. Foreign Bond	36	1.15	86,109.00	0.86
Total	3,133	100	10,007,274.60	100

THB = Thai baht.

Note: Outstanding summary as of 29 February 2016.

Source: Thai Bond Market Association.

More information on outstanding bond and note issues and other statistics on the Thai bond market can be found on the websites of the BOT and ThaiBMA.²³ *AsianBondsOnline* is a bond information portal operated by ADB under an ASEAN+3 initiative. Detailed information on Thai public debt is also available on the PDMO website.²⁴ For a complete list of relevant links, please refer to Appendix 2: Practical References.

Given the online availability of a significant amount of up-to-date bond market statistics for Thailand, the Thailand Bond Market Guide no longer includes a chapter on statistics.

²³ See <https://www.bot.or.th/English/Statistics/FinancialMarkets/Pages/StatDebtSecurities.aspx>

²⁴ See http://www.pdmo.go.th/en/popup_money_data.php?m=money&ts2_id=1

E. Methods of Issuing Bonds (Primary Market)

1. Methods of Government Securities Offering

Most government securities are issued through an auction conducted by the BOT and PDMO. The BOT is responsible for the auction of Treasury bills, loan bonds, and BOT bonds, while the PDMO is responsible for SOE bonds, both with and without a government guarantee.

The BOT established a two-type bidding system for government securities:

(a) Competitive bidding

Eligible participants are required to submit a bidding form through an electronic channel (e-Bidding) by 9:30 a.m. on the auction date. A bidder should indicate the desirable size and yield, with a minimum amount of THB100 million.

(b) Noncompetitive bidding

Noncompetitive bidding is limited to certain types of investors, such as nonprofit organizations, foundations, and savings cooperatives. Investors eligible for noncompetitive bidding have to submit subscription forms to primary dealers by noon a day prior to the auction date. Bidders indicate only the size they prefer to take, which should be between THB4 million and THB100 million, at the average accepted yield of the auction. The primary dealer then submits the consolidated bids to the BOT by 2 p.m. on the same day.

In January 2015, the PDMO introduced a green shoe option, which gives primary dealers the option to acquire an additional 20% of their allocated amount (exclusively for 5-year bonds), at the average accepted yield of the auction.

As for the auction of SOE bonds, the PDMO had previously adopted the Dutch auction method. However, in 2014, the PDMO began using the book-building method when offering certain SOE bonds. The PDMO usually calls for bids among underwriters on a full commitment basis. Bidders should submit an underwriting proposal detailing yields, fees, and all other expenses, together with the names of related parties. The bidding result is posted on the PDMO website at approximately 11 a.m. on the auction date.

2. Corporate Bond and Note Offering Methods

A bond or note offering in the private sector may be conducted through either a public offering or as a private placement. All offerings of corporate bonds and notes in the Thai market are subject to issuance approval by the SEC, and possibly other regulatory authorities. The regulatory framework and its relevant processes for these offering methods are described in Chapter II. Corporate bonds and notes, in particular public offers, are usually sold through the underwriting process.

(a) Public offering

Bonds and notes issued through a public offering can be bought and sold by any investor. A public offering of debt securities carries significant documentation and disclosure requirements compared to a private placement. At the same time, since

publicly offered bonds and notes are offered to a variety of investors, they are more actively traded and, typically, more liquid in the secondary market.

Publicly offered bonds and notes may be listed on the SET and/or registered to trade on TBX. In practice, most publicly offered bonds are traded in the OTC market and registered with ThaiBMA instead.

(b) Private placement

In a private placement, a bond or note is offered to a specific, limited target group of investors. Private placement formats in the Thai market distinguish between one of two types:

- (i) PP-AI is an offer format that has been available since 2012 and is limited to institutional investors and high net worth investors considered Accredited Investors under regulations issued by the SEC. In effect, PP-AI represents the professional bond market in Thailand.
- (ii) A limited number private placement, often referred to as PP10 in market practice, represents a private placement to a maximum of 10 investors within any 4-month period. This form of private placement is not very common.

A bond or note offered through a private placement is negotiated only between the issuer and specified investors that the issuer has registered with the SEC (under PP-AI or PP10), and subsequently traded off the exchange in the OTC market. For more details, please refer to section F in this chapter and to Chapter IV.

3. Corporate Bond and Note Issuance Procedures

Once a corporate issuer decides to issue bonds or notes, a Financial Adviser, which is a designation specific to the Thai market, and carries distinct functions and licensing in regulations, may be appointed to provide an opinion on the type, conditions, and other relevant details of the bond issuance. The Financial Adviser is often employed for preparing and submitting the necessary application(s) and documents for issuance approval from the SEC. The Financial Adviser may also work to have the bond or note rated by at least one SEC-approved rating agency, if so required by applicable regulations, the targeted investor universe, or the listing place.

In addition, the issuing company may appoint an underwriter who will allocate the bond or note issuance to the targeted investors after receiving SEC approval. The appointment of an underwriter is not mandatory under Thai securities regulations and, hence, in some cases, issuers may decide to go through the process without the help of an underwriter or a Financial Adviser.

There is a distinction in the bond and note issuance procedure between Thai residents and foreign issuers, which is expressed in the different approvals to be obtained prior to issuance. For the process of issuance approval for both resident and foreign issuers—including filing and information requirements for issuers, Financial Advisers, and underwriters—please refer to section F.

F. Governing Law and Jurisdiction (Bond and Note Issuance)

The governing law and jurisdiction for a bond or note issuance may be of significance since potential issuers can consider issuing under the laws or jurisdiction of a country or market other than the place of issuance. The choice of governing law or contractual preferences of stakeholders may affect the accessibility to a specific investor universe that may otherwise not be accessible if a bond or note were issued under the laws of the place of issuance.

Thai law accepts the contracting parties' right to agree on the governing law or jurisdiction for contractual arrangements. The legal basis is contained in the Conflict of Laws Act B.E. 2481, 1938.

In 2006, the MOF issued the Notification: Permission to Issue Baht-Denominated Bonds or Debentures by Foreign Entities in Thailand, which stipulates rules for foreign entities to issue THB-denominated bonds or debentures under the Baht Bond concept. Clause 8 of the notification (Applicable Laws and Applicable Jurisdiction) states that “[the] Grantee shall include in the terms and conditions of the bond or debenture approved pursuant to this Notification a stipulation that such terms and conditions are subject to the laws of the Kingdom of Thailand, and that any legal proceedings related to such bond or debenture be subject to Thai court unless the Minister has approved otherwise.”²⁵

Should the parties involved in a bond or note issuance choose to use Thai law, the jurisdiction of the issuance would fall to Thai courts by default. If, in contrast, issuance parties agree on another governing law, the parties would also have to specifically determine the jurisdiction of a court in which provisions of the bond or note issuance (e.g., settlement agency) could be enforced and any disputes would be heard and decided.

In the case of issuance of THB-denominated bonds and notes in Thailand, including when contracting parties choose governing law other than Thai law for the contract, it would still be natural to elect Thai law as the law specific to issuance- and settlement-related matters.

In any case, the actual use of governing laws or jurisdictions other than those of Thailand may be subject to clarification or legal advice from a qualified law firm, as may be necessary.

G. Language of Documentation and Disclosure Items

Under present regulations, a Thai issuer issuing a bond or note to Thai investors, regardless of whether professional or retail, needs to submit the issuance application, documentation, and disclosure items, for both initial and continuous disclosure, in the Thai language.

Foreign issuers are able to submit Baht Bond issuance applications to the PDMO and SEC, and the supporting documentation and disclosure items in English. Any correspondence required may be conducted in English as well. Foreign issuers are required to appoint a contact person in Thailand to field questions from, or provide information to, Thai residents in Thai as needed (also see details in section M.3).

If a Thai issuer—including the branches, subsidiaries, or affiliates of international corporates—wishes to issue bonds and notes to professional investors in Thailand and, possibly, other jurisdictions, issuance documentation and disclosure items can be provided in English.

²⁵ Ministry of Finance of Thailand. Permission to Issue Baht-Denominated Bonds or Debentures by Foreign Entities in Thailand. http://www2.mof.go.th/webmanage/ps_releases/3/42-2006.pdf

H. Registration of Debt Securities

Under SEC regulations, all bonds and notes issued in Thailand as public offers or private placements, regardless of issuer domicile or currency, must be registered with ThaiBMA, with the exception of limited number private placements and short-term notes. In contrast, bonds and notes issued in Thailand but offered for sale outside Thailand need not be registered with ThaiBMA.

In the Thai market, registration is defined as the process of issuers or their agents providing bond and note information to ThaiBMA, and is a condition set by the SEC for the offering of a bond or note in the primary market.

While the SEC transmits an initial set of bond or note registration information to ThaiBMA electronically, according to ThaiBMA regulations, the issuer, Financial Adviser, and underwriter are still required to submit a separate application form and additional information to ThaiBMA. Distinct registration forms exist for long-term corporate bonds and commercial paper. (For the latter, a distinction is made between an initial and additional issue.) The additional information is required to enable ThaiBMA's technical set-up of a bond or note issue, including issuer data, in its system and on its website. Government bonds are automatically registered with ThaiBMA by the BOT.

Effective 1 July 2015, however, the ThaiBMA registration process was integrated with the SEC approval process. When bond and note issuers submit their filing to the SEC through IPOS and the issuance is subsequently approved by the SEC, the bond and note information will be electronically submitted to the ThaiBMA registration database. The issuer can then print the official registration form already containing all required information from IPOS and submit it to ThaiBMA as the formal registration request.

The registration process is normally completed within 24 hours. Upon ThaiBMA registering bond or note information, the information is available on the ThaiBMA website for general viewing.

This registration feature in the Thai market offers visibility through issuer and issue information, and trading data on specific bonds and notes (market segments or the market at large), and results in the publication of official prices, which is often a specific requirement in the prudential regulations governing mutual, pension, and provident funds.

Registration with ThaiBMA also fulfills the registration and profile listing criteria under AMBIF since profile listing is not practiced in Thailand. For more details, please refer to section I in this chapter and to Chapter X.

I. Listing of Debt Securities

A listing of debt securities may occur for the purpose of trading (similar to equities) or for the purpose of profile or reference listing.

In Thailand, the listing of a bond or note is not a regulatory requirement stipulated by either the SEC or PDMO in the case of foreign issuers.

1. Listed Securities

Listed securities are debt instruments listed, or authorized to be traded, on the SET's main board or on TBX. The issuer, or its agent, needs to obtain approval from the SET for such a listing. In Thailand, most publicly offered government and some corporate bonds are listed.

2. Thailand Bond Exchange-Listed and Publicly Offered Bonds

Once a government bond is auctioned or a corporate bond or note placed in the primary market, these bonds and notes can be listed on the SET's TBX for trading in the secondary market. At present, market practice in Thailand considers only publicly offered bonds for listing for trading on TBX. In contrast, private placements are not listed in Thailand.

For more information on TBX's rules related to bond and note listings, please refer to the SET website.²⁶

3. Profile Listing

Profile listing is not practiced on either the SET main board or TBX. However, the SET is in the process of evaluating appropriate mechanisms for profile listing of bonds and notes.

Since profile listing is intended to achieve enhanced visibility for an issuer's bonds and notes among potential investors, such profile listing in the Thai market may already have its equivalent in the mandatory registration of bonds and notes with ThaiBMA. For more details on ThaiBMA, please refer to section H in this chapter.

4. Other Listing Places

In principle, bonds or notes issued in Thailand may also be listed outside of Thailand. Some issuers have obtained a profile listing of their bonds and notes in other ASEAN+3 markets, with the intention of accessing a different or larger investor universe.

The process for such listings is beyond the purview of the SEC and would be subject to separate, applicable approvals and listing rules and regulations in the country of listing.

J. Methods of Trading Bonds and Notes (Secondary Market)

There are two secondary bond markets in Thailand: the OTC market administered by ThaiBMA and the SET's TBX.

Government bonds are the most actively traded securities, accounting for approximately 80%–90% of total trading volume at any point in time.

1. Over-the-Counter Market

The OTC market is the main trading venue for bonds and notes issued in Thailand. ThaiBMA is mandated by law to administer the OTC market and sets the requirements for membership

²⁶ See http://www.set.or.th/en/products/listing/bond_listing_p1.html

as well as the trading rules. Market participants wanting to transact in the OTC market are required to be ThaiBMA members.

ThaiBMA has three types of members:

- (i) **ordinary members**, comprising financial institutions with a debt-trading license (dealer);
- (ii) **extraordinary members**, comprising companies with an inter-dealer broker license; and
- (iii) **associate members**, comprising firms that facilitate the trades of an ordinary member with a monthly average trading value in each of the past 12 months of less than THB100 million.

Since bonds and notes are normally traded in big lots and traded less frequently than equities, most bonds and notes transacted in the secondary market are traded OTC, with the buyer and seller negotiating either over the telephone or through an inter-dealer broker.

2. Thailand Bond Exchange

TBX is a division of the SET and offers trading for both listed government bonds and corporate bonds and notes to its members, which are brokers and securities firms. In line with its original mandate, TBX has a strong orientation toward the retail market.

The volume of bond and note trading on TBX has remained low, accounting for less than 3% of the overall bond and note trading volume in Thailand.

K. Bond and Note Pricing

In addition to its functions as the bond market SRO and registration authority for debt securities in Thailand, ThaiBMA also provides the services of a bond pricing agency.

ThaiBMA calculates bond prices on the basis of actual trade data provided by its participating institutions within 30 minutes of the trade. If there is no traded price, quotes will be obtained from active dealers. In the event that a bond or note registered with ThaiBMA is inactive or not frequently traded, and no quotes are available, ThaiBMA will use defined algorithms to determine a fair market value.

The prices calculated and published by ThaiBMA are used by market participants as official data for their own mark-to-market calculation of bond positions or portfolios. For mutual funds, ThaiBMA mark-to-market prices are used to calculate the net asset value.

L. Transfers of Interests in Bonds

1. General Rule

The transfer of debentures, which is the official legal name for bonds and notes, will be valid upon delivery of such debentures with the endorsement of transfer by persons having their names as owners or by the last transferee. The transfer will legally bind a third party once the transfer has been registered with the debenture issuer in the debenture register book. For government securities, the transfer is done on a delivery-versus-payment basis.

2. Actual Registration and Transfer Process

TSD is the depository for equities, corporate bonds, and government bonds, including most securities issued via private placement. Securities held with TSD are registered in the name of Thailand Securities Depository Company Limited for Depositors. Securities transferred within TSD do not require re-registration.

Scripless securities from a settled purchase can be redelivered on the settlement date. Physical certificates can be converted to scripless form at the depository within the same day.

Re-registration of physical certificates following a purchase takes approximately 30–45 business days, during which time the security cannot be sold. Although corporate bond dealers instruct TSD to transfer bonds to the counterparty upon receipt of cash payment by check, registration of corporate bonds is done separately with the registrar appointed by the issuing company.

TSD is the registrar for many listed corporate bonds. Unlisted securities and shares can be registered in the investor's own name, or in the name of a global custodian, care of the subcustodian. Local nominee registration is prohibited. The subcustodian sends non-TSD eligible securities for registration upon receipt, unless there are specific instructions to hold the securities in street name. Investors can hold securities in street name, but they will not receive entitlements from corporate events.

Removal of securities from TSD in physical form can take 30–45 business days, and TSD imposes a service charge for the withdrawal of physical securities.

Physical securities from a settled purchase can be delivered onward once all required documents are in place. The BOT acts as the registrar for government securities (Treasury bills, BOT bills, SOE-guaranteed bonds, and financial institution development bonds), which are registered in the beneficial owner's name or the global custodian's name, under the Bond Registry System.

Under the Bond Registry System, the buyer and seller must endorse the back of the certificates and submit original written instructions to the BOT. The title to the securities passes on T+2 after the proceeds are credited to the seller's cash account.

3. Custodian Point of View

Banks and brokers acting as custodians recognize only the owner of the securities as reflected in their books (their client), and they may not know or recognize the end-beneficiary owner. For the transfer of securities, custodian banks only act upon instructions of their clients.

On book closed date, or record date, custodians will submit their client(s) or registered owner(s) who have holdings over those securities as of the end of the day of record date to the securities registrar to ensure that their client(s) receive the respective corporate action entitlements, such as coupon payments. For voluntary corporate actions, custodians will await their client's instructions if the client wishes to participate in a particular corporate action event.

M. Market Participants

1. Issuers

Major issuers in Thailand's fixed-income market include the Government of Thailand and its statutory bodies, as well as corporates and financial institutions. In addition, foreign issuers have in the past few years issued a significant amount of debt securities in the Thai market, mostly denominated in Thai baht. Most notably, regional governments, such as the Lao PDR, have also issued bonds in the Thai market.

2. Investors

Institutional investors dominate the Thai bond market; Thailand does not use the term wholesale investors. Institutional refers to juristic person investors, while individuals are designated retail investors, unless they qualify as high net worth investors. Professional investors and their participation in the Thai bond market is further explained in section N in this chapter.

Major bond investors include domestic pension funds or provident funds, asset management companies, mutual funds, commercial banks, government savings banks, insurance companies, savings funds, and other corporate investors. A number of authorized securities companies and a few market associations also participate in the market. Retail investors may participate directly in the Thai bond market when investing in savings bonds or similar government securities, but may only participate in the corporate bond market by, for example, investing in units of mutual funds with a focus on debt securities.

3. Intermediaries

A number of intermediaries provide services to issuers and investors in the Thai bond market. They are reviewed here relative to any specific functions or requirements they may fulfill.

(i) Financial Adviser

The function of the Financial Adviser is specific to the Thai market in that the Financial Adviser may provide a number of roles that may typically be performed by a traditional underwriter or investment bank. The role of a Financial Adviser is provided for under Thai regulations, and the Financial Adviser is a legal entity licensed by the SEC; the Financial Adviser license is different from that of an underwriter. The duties of a Financial Adviser include the preparation and submission of a registration statement or an offering circular to the SEC. Under PP-AI, the SEC does not require issuers to appoint a Financial Adviser. However, if an issuer appoints one, the Financial Adviser must be licensed by the SEC.

A Financial Adviser is employed by the issuer and may be involved in the determination of funding strategies, including the issuance of bonds or notes. The Financial Adviser may also raise issuance documentation and disclosure items before filing or submitting issuance applications to the relevant regulatory authorities.

(ii) Underwriter

An underwriter is appointed by the issuer. The roles of an underwriter include the purchase of a predetermined portion of the issuance amount, and the marketing and

distribution of the issuance to investors, whether institutional or retail. The underwriter typically supports the compilation of issuance documentation and disclosure items and any required submission for approvals from regulatory authorities (unless a Financial Adviser has been employed by the issuer for these purposes).

The SEA defines an underwriter as any person who underwrites the sale of securities to the public. There is no specific license for an underwriter; instead, the function is subsumed under the license to conduct securities business. Underwriters in the context of a bond or note issuance can be banks, brokers, or securities firms.

For a public offer of debt securities, the appointment of an underwriter is required by regulations. However, an underwriter is not mandatory if an offer is made under PP-AI. A list of approved underwriters is available on the SEC website.

(iii) Paying or fiscal agent

Paying or fiscal agents are typically commercial banks or securities firms appointed by the issuer to facilitate the payment and distribution of coupon and redemption payments for bonds or notes issued by the corporate sector. The function includes the withholding of applicable taxes and duties.

TSD acts as the paying agent for Thai government bonds.

(iv) Bondholder representative

The bondholder representative is a function mandated by Thai law, similar to that of a trustee in other jurisdictions, and subject to certain conditions. Bondholder representatives are appointed by the issuer and are typically commercial banks or securities firms. For a detailed description of their role and functions, please refer to section Q.

(v) Law firms

Law firms involved in the bond and note issuance process in Thailand are not required to obtain a specific license or accreditation with the SEC. There is no positive or negative list for law firms published by the SEC.

(vi) Audit firms

Audit firms are also involved in the bond and note issuance process in Thailand. The financial statement of an issuer for the sale of debt securities to the public and under PP-AI must be reviewed or audited by an approved audit firm. The list of approved audit firms is available on the SEC website.

N. Definition of Professional Investors

In July 2012, the SEC published regulations for a comprehensive professional investor scheme in the context of private placements of debt securities, referred to as private placements to Accredited Investors, or PP-AI. In March 2009, through the Notification of the Securities and Exchange Commission No. KorChor. 5/2552, Re: Determination of Definitions in Notifications relating to Issuance and Offer for Sale of Debt Securities, the SEC

had previously defined a number of professional investor categories, including institutional investor and high net worth investor. The number of categories and level of detail were expanded as follows under the PP-AI concept in the 2012 Notification of the Securities and Exchange Commission No. KorChor. 9/2555 Re: Determination of Definitions:

- (a) institutional investors refer to
 - (1) BOT;
 - (2) commercial banks;
 - (3) banks established under specific law;
 - (4) finance companies;
 - (5) credit foncier;
 - (6) securities companies;
 - (7) nonlife insurance companies;
 - (8) life insurance companies;
 - (9) mutual funds;
 - (10) private funds managed by securities companies for investments under (1)–(9) or (11)–(29), or a high net worth investor;
 - (11) provident funds;
 - (12) government pension fund;
 - (13) Social Security Fund;
 - (14) National Savings Fund;
 - (15) Financial Institutions Development Fund;
 - (16) derivatives business operator under the Derivatives Act B.E. 2546, 2003;
 - (17) future business operator under the Agricultural Futures Trading Act B.E. 2542, 1999;
 - (18) international financial institutions;
 - (19) DPA;
 - (20) SET;
 - (21) juristic person in the category of statutory corporation;
 - (22) juristic person whose shares are held by person under (1)–(21), in aggregate, exceed 75% of all shares with voting rights;
 - (23) foreign investors with the same characteristics as investors under (1)–(22);
 - (24) fund manager whose name is registered as a qualified fund manager under the Notification of the Office of the Securities and Exchange Commission concerning rules, conditions, and procedures for appointing and performing duties of a fund manager;
 - (25) derivatives fund manager whose name is registered as a qualified derivatives fund manager under the Notification of the Office of the Securities and Exchange Commission concerning rules, conditions, and procedures for appointing and performing duties of a fund manager; and
 - (26) any other investors as specified by the SEC office.
- (b) high net worth investors refer to
 - (1) juristic persons having any of the following characteristics:
 - (a) having shareholder equity in accordance with the latest financial statements audited by auditor not less than THB100 million, or
 - (b) having direct investment not less than THB20 million in securities or derivatives in accordance with the latest financial statements audited by auditor;

- (2) individuals, when combined with spouse, having any of the following characteristics:
 - (a) having net asset value not less than THB50 million providing that value of property which is a permanent residence of such individual shall not be included,
 - (b) having annual income of not less than THB4 million, and
 - (c) having direct investment in securities or derivatives not less than THB10 million.

The Accredited Investors concept includes foreign institutional investors as long as they fall into any of the prescribed investor types. There are many foreign institutional investors already investing in Thailand.

These professional investor definitions are particularly significant in relation to the investment by such investors in debt securities exempt from full disclosure requirements, such as private placements.

O. Credit Rating Requirements

This section covers the applicable credit rating requirements for bonds and notes issued in Thailand. For more details on the underlying regulations or authorization for the credit rating agencies, please refer to section K in this chapter.

Credit rating requirements in the Thai bond market are determined and regulated by the SEC. According to these regulations, new debentures issued through public offers must have a credit rating from an authorized credit rating agency.

In contrast, some private placements are not required by regulations to carry a credit rating; this is the case specifically for PP-AI because these issues are aimed at professional investors that are expected to conduct their own credit assessment processes. This concession was put in place by the SEC in 2012, in conjunction with the introduction of the Accredited Investors concept.

If, however, a rating for an issuer and/or a PP-AI issuance is required between parties involved in a private placement transaction, only the rating of a credit rating agency approved by the SEC will be acceptable in the Thai market.

However, it has been observed that market participants may still prefer to have credit ratings in place since many market participants designated as professional investors may no longer be able to replicate in-house the credit assessment process undertaken by the credit rating agencies. Yet, even though an offer of debt securities under a PP-AI is exempt from having a credit rating, in practice, an issuer would usually get a credit rating due to the requirement of the lead regulators of the institutional investor. For example, according to the regulations of the Office of Insurance Commission, an insurance company can invest only in investment-grade debt securities.

At the same time, in cases of a foreign issuer offering Baht Bonds to Accredited Investors, the PDMO still requires a credit rating, except if such THB-denominated bonds and notes are issued by a government or guaranteed by a government. Corporate foreign issuers are expected to enjoy an international credit rating of equal to or better than A- to qualify for a

Baht Bond issuance. Recently, the Baht Bond Committee—comprising the BOT, PDMO, and SEC—has facilitated the issuance of Baht Bonds by entities from Cambodia, the Lao PDR, Myanmar, and Viet Nam (CLMV). Such applicants for Baht Bonds with a minimum domestic credit rating of investment grade (BBB–) by a credit rating agency approved by the SEC are now eligible to apply. However, the Baht Bond Committee maintains a limit on total issuance by these four countries that is revised from time to time.

P. Market Features for Investor Protection

This section deals with a number of topics that have a bearing on the protection of investors in the Thai bond market, particularly retail or nonprofessional investors.

1. Retail Investors

If investors, whether institutional or retail investors, would like to report unfair treatment or give information on irregular securities trading, a potential fraud or violation of the securities laws, they can submit a tip or complaint to the SEC Help Center.²⁷ The SEC will respond as soon as possible to ensure that capital market activities are fair, transparent, and reliable.

Retail investors interested in obtaining knowledge and a better understanding of bonds, investments, securities business operators, products, and services in the capital market can visit www.start-to-invest.com for more information before investing in the capital market. In March 2015, the SEC also started a Capital Market Knowledge Center to disseminate relevant information to interested investors.

Furthermore, the SEC, ThaiBMA, and the Thai Investors Associations codeveloped the Bond Supermart as a corporate bond information platform for retail investors. The platform provides prices and the necessary information for liquid bonds traded in the secondary market, as well as basic information, dealer contact details, and a bond price and return calculator, which could be of use for trading with dealers. In addition, deposit interest rates and government bond yields are provided for comparison. Bond Supermart can be accessed through five channels including the ThaiBMA websites (www.thaibma.or.th and www.thaibond.com²⁸), SEC websites (www.sec.or.th and www.start-to-invest.com), and SEC's Start-to-Invest mobile application.

Most financial institutions in Thailand provide services for retail investors interested in buying and selling bonds.

2. Foreign Investors

Foreign investors investing in Thai securities enjoy the same investor protection and have access to the same investor protection mechanisms and information, if available in English, as Thai investors.

²⁷ See <http://www.sec.or.th/EN/SECInfo/ContactUs/Pages/Complaints-and-Inquiries.aspx>

²⁸ The visitors to [thaibond.com](http://www.thaibond.com) (<http://www.thaibond.com/>) must accept a disclaimer statement in order to access the site.

3. Bondholder Rights and Bondholder Representative

The Civil and Commercial Code and the Bankruptcy Act cover basic bondholder rights. The Civil and Commercial Code covers the principles and rules for civil law for business and individuals. Obligations, contracts, mortgages, and other forms of loan security also fall under the Civil and Commercial Code, as well as liquidation procedures for insolvent debtors.

Under the Bankruptcy Act, creditors, including bondholders, can file a petition with the Bankruptcy Court for a rehabilitation or bankruptcy proceeding against a debtor's business. Indenture agreements in bond issues can also specify a bondholder representative. The bondholder representative oversees bondholder rights, including the filing of claims and demand of payments from the issuer or guarantors. Bondholders can sue and claim damages from the bondholder representative in case it acts in bad faith or causes damages to bondholders. Foreign bondholders have rights similar to Thai bondholders.

Bond documents (e.g., Prospectus, term sheets, or indenture agreements) may also contain covenants and relevant default clauses specific to the bond issue to provide additional protection for bondholders.

Certain documents in the public domain, such as the Restructuring and Insolvency Guide (Asia-Pacific), authored by the law firm Clifford Chance in 2013, provide more detailed information on creditor rights in countries in Asia and the Pacific.

The SEA stipulates the appointment of a bondholder representative in case of a secured bond, regardless of the type of offer, while SEC regulations require the appointment of a bondholder representative if a bond or note is offered through a public offer. For more details, please refer to section Q in this chapter.

4. Prevention of Fraud

The Enforcement Department of the SEC investigates and gathers evidence on possible offenses under the SEA, Provident Fund Act, and Royal Enactment on Special Purpose Juristic Persons for Securitization. Typical violations under the SEC's purview include insider trading, share-price manipulation, false or misleading information regarding securities, operating securities businesses without proper licenses, mismanagement, and fraud.

5. Ethics

As an SRO, ThaiBMA is authorized to maintain the integrity of the Thai bond market. It registers and regulates dealers, and monitors all trading activity. In addition to its self-regulatory functions, it implements standards and conventions for the bond market including code of conduct and ethics for bond trading. The ThaiBMA website provides guidelines on membership, the registration and trading of debt instruments, the registration of traders, ethics and good practices of dealers, and reporting requirements.²⁹

The SET serves as a center for the trading of listed securities. It is an SRO that governs its member companies' conduct in the dealing of securities, including debt securities on TBX. The SET is also responsible for marketplace surveillance, and supervising and enforcing

²⁹ ThaiBMA. Section VI: Ethics of Conducting Business. <http://www.thaibma.or.th/pdf/sro/section6.pdf>; Section VII: Disciplines and Sanction of the Members. <http://www.thaibma.or.th/pdf/sro/section7.pdf>

disclosure standards for listed companies. It provides essential systems for securities trading and crucial post-trade infrastructure, such as a clearing house, a central securities depository, and the central securities registrar function.

The Thailand Futures Exchange (TFEX), a subsidiary of the SET, is a derivatives exchange that offers products for effective hedging. It is governed by the Derivatives Act B.E. 2546, 2003 under the supervision of the SEC. The TFEX trading infrastructure is designed to ensure a fair, orderly, and transparent market by offering market participants a high-quality, cost-efficient, and comprehensive range of services, including an order-entry facility, a matching system, and market dissemination through an electronic trading platform.

6. The Securities and Exchange Act (No. 4) B.E. 2551, 2008

The Securities and Exchange Act (No. 4) B.E. 2551, 2008 came into force on 5 March 2008. The SEA provides strong protection for investor interests and enhances the corporate governance of listed companies. It is a robust foundation for quality products and confidence in the Thai capital market. The SEA comprises three major areas—regulatory bodies, corporate good governance, and investor protection—to help the Thai capital market meet international standards.

Aspects of investor protection covered in the SEA include

- (i) proposed agenda items for shareholder meetings,
- (ii) lawsuits for damages from disclosure of falsified information,
- (iii) claims to disgorge ill-gotten benefits obtained by company directors or management who are in breach of duties,
- (iv) reimbursement of reasonable litigation expenses from the company as ordered by the court, and
- (v) the provision of a clear scope of duties and responsibilities for company directors and management.

7. The Trust for Transactions in the Capital Market Act B.E. 2550, 2007

The Trust for Transactions in the Capital Market Act (Trust Act) came into effect on 14 April 2008. The objectives of the Trust Act are to strengthen the Thai capital market and to introduce new investment alternatives. The Trust Act is summarized below.

- (a) Characteristics of a trust

A trust is a legal relationship binding three parties as follows:

- (i) **Settlor.** A settlor under the Trust Act is limited to a juristic person who is an issuer of securities under the SEA or an originator in a securitization transaction under the Royal Enactment on Special Purpose Juristic Persons for Securitisation B.E. 2540, 1997, or as specified by the SEC.
- (ii) **Trustee.** Licenses authorized by the SEC are required. Trustees can be commercial banks or financial institutions established under specific laws, or other juristic persons as specified by the SEC. A list of trustees who have been given an approval by the SEC can be found on the SEC website.
- (iii) **Beneficiary.** There is no restriction imposed on the type of person who can be classified as a beneficiary. However, the settlor and trustee can be a beneficiary

only when another third person(s) is also a beneficiary or beneficiaries of the trust. The Trust Act provides that the interest of such a settlor or trustee beneficiary in the trust fund must not exceed the limit specified by the SEC. Otherwise, the excess portion will be shared among the other beneficiaries to that trust.

(b) Types of trusts

There are two types of trusts under the Trust Act: passive trust and active trust.

(i) Passive trusts comprise

- (a) employee stock option plans,
- (b) employee joint investment programs,
- (c) derivative warrants,
- (d) reserve accounts or sinking funds for bond issuance, and
- (e) securitization (segregation of assets for the purpose of collecting debts incurred by a special purpose vehicle).

(ii) Active trusts comprise

- (a) institutional investors and high net worth trust funds,
- (b) real estate investment trusts,
- (c) exchange-traded funds,
- (d) special purpose trusts,
- (e) *sukuk* (Islamic bonds or notes).

(c) Creation of trusts

Under the Trust Act, a trust is required to be created through a written contract between a settlor and a trustee where the settlor expresses an intention to create a trust, as well as transfers property to the trustee, or a written declaration to create a trust has been submitted to the SEC in cases where the settlor and the trustee are the same person; in the latter case, a transfer of assets is not required.

The Trust Act stipulates that a trust may be created only for transactions that will benefit the capital market, for instance, through the issuance of securities or securitization transactions. Therefore, trusts intended for use exclusively in banking transactions and not related to capital market transactions cannot be created.

(d) Fiduciary relationship

The fiduciary relationship focuses on three key rules:

- (i) **Bankruptcy remoteness.** A trust property legally owned by a trustee shall not be enforced for payment to creditors of the trustee even though the trustee becomes bankrupt.
- (ii) **Fiduciary duties.** A trustee shall manage a trust with skills, loyalty, and reasonable care for the best interest of the beneficiary, and shall not act in conflict of interest with the trust except in cases of remuneration or a fair transaction being sufficiently disclosed to the beneficiary in advance and with no objection from the beneficiary.
- (iii) **Beneficiary protection.** Tracing and recovery are tools for protecting the beneficiary's interest. In cases of tracing, a beneficiary has the power to trace

trust property from a third party who receives such property with bad faith, or knowing or having reasonable grounds to know that it is a breach of trust or without consideration. For recovery, the beneficiary has the right to claim compensation for benefit of the trust from a trustee who fails to manage the trust property in accordance with the trust contract or the Trust Act itself.

(e) Eligible persons

Persons eligible to apply for an approval to undertake trust business include

- (i) a commercial bank under the Financial Institution Business Act;
- (ii) a financial institution established under specific laws;
- (iii) a security company with eligible licenses as broker, dealer, underwriter, mutual fund manager, and private fund manager.

(f) Bondholder representative or trustee

A bondholder representative or debenture holder representative cannot play a trustee's role in Thailand. There are separate rules and regulations that govern bondholder representative and trustees. The bondholder representative's role is to protect the bondholder as defined in the SEA. On the other hand, while the role of a trustee is stated in the Trust Act, it does not have significant bearing on bond issuance.

Public bond issuance requires a bondholder representative recognized by the SEC who has fiduciary duties to act for the benefit of the bondholders. For more details, please refer to section Q.

8. The Deposit Protection Act B.E. 2551, 2008

The DPA was launched on 11 August 2008 under the Deposit Protection Act. The DPA was established to protect depositors within a certain coverage amount against the loss of their deposits placed in a financial institution. The source of funds for compensation mainly comes from premiums collected from financial institutions, which are members of the deposit insurance system. Nonresident accounts, however, are not protected under this act.

The following are key features of the DPA are described below:³⁰

- (i) Membership in the DPA is compulsory for commercial banks, foreign bank branches, finance companies, and credit finance companies. Members pay premiums to the DPA at the rate of 0.01% annually on deposits. This premium rate may vary in the future.
- (ii) The maximum coverage is THB1 million per depositor per institution. Any amount exceeding this coverage is to be recovered from the assets of the failed institution through the process of liquidation. The DPA will gradually reduce coverage from a full guarantee to the target amount of THB1 million within 4 years. In 2008, full coverage was maintained. Coverage was scheduled to be reduced each subsequent year to THB100 million; THB50 million;

³⁰ Further information on the DPA—including its functions, activities, and the premium payable—can be found on the DPA website in the Annual Report (in English), which is available at <http://www.dpa.or.th/ebook/B0049/index.html>

- THB10 million; and finally to THB1 million in 2012, the fifth year of the DPA's establishment.
- (iii) The DPA will act as a liquidator of a failed financial institution, reimburse the compensation made, and also pay other creditors according to their shares.

Q. Bondholder Representative

SEC regulations require the appointment of a bondholder representative for publicly offered bonds and secured bonds. A bondholder representative must register with the SEC and is responsible for implementing the bondholder resolutions. Under Thai law, the responsibilities of a bondholder representative are very similar to the activities of a trustee in other jurisdictions. These responsibilities and obligations are stipulated in the law and are more specific with regard to the terms and conditions for debentures or debt securities. Bondholder representatives typically are banks or financial institutions.

The bondholder representative sets up the contract and the terms and conditions for the bond or note issue in accordance with SEC guidelines. The bondholder representative has a fiduciary duty, as well as any duty and liability set out in the terms and conditions of a particular issue. The bondholder representative oversees bondholder rights, including the filing of claims and demand of payments from the issuer or guarantors, as well as compliance with applicable covenants. Bondholders can sue and claim for damages from the bondholder representative in cases when the bondholder representative acts in bad faith or causes damages to bondholders. Both the appointment of a bondholder representative and the actual terms and conditions need to be registered with the SEC.

According to the law, the issuer “shall appoint the bond or debenture holder representative in Thailand during the tenure of the bond for the benefits to the holders.”³¹ The bondholder representative calls for bondholder meetings or undertakes all such activities as may be required on behalf of the bondholders, including in the case of a default.

The appointment of a bondholder representative is not mandatory for PP-AI issuances, except in the case of secured bonds, as stipulated in the SEA. However, the PDMO requires the appointment of a bondholder representative for bonds and notes issued by a foreign issuer under the Baht Bond program. The SEC also does not require the issuer to appoint a bondholder representative in the case of a bond or note issued in another jurisdiction that is offered for sale in Thailand's PP-AI market.

R. Bankruptcy Procedures

According to the Bankruptcy Act B.E. 2483, 1940, except in the case of a secured bond, corporate bondholders shall be treated as ordinary creditors. In addition, under the SEA and Trust Act, if the issuer of corporate bonds sets up a reserve account or sinking fund in the form of a trust, bondholders shall have bankruptcy remoteness and, ultimately, rights to that trust property. When the company goes bankrupt, corporate bondholders shall have the right to the property of the company and receive performance of an obligation due to them according to the following prioritization:

³¹ Relevant provisions contained in SEC Act, Chapter 2, Issuance of Securities can be found at <http://www.sec.or.th/EN/SECInfo/LawsRegulation/Documents/actandroyal/1Securities.pdf>

- (i) bondholders for which the issuer has set up a reserve account or sinking fund in the form of a trust,
- (ii) secured creditors, and
- (iii) unsecured creditors.

Further details on the restructuring and insolvency frameworks of Thailand and other economies in Asia and the Pacific can be found in the *Asia-Pacific Restructuring and Insolvency Guide 2006* and *A Guide to Asia-Pacific Recovery and Insolvency Procedures*.³²

S. Event of Default

Generally, an event of default is stipulated in the terms and conditions of a debenture. Under Thai law, the terms and conditions are deemed to be an agreement between the debenture issuer and the debenture holder. Events of default that are normally stipulated in the terms and conditions of a debenture are listed below.

- (1) **Nonpayment** occurs if the issuer makes a default in the payment of any principal, premium, or interest due with respect to a bond.
- (2) **Breach of other obligation** occurs if the issuer does not perform or comply with one or more of its other obligations under a bond or note, the Trust Deed, or terms and conditions.
- (3) **Insolvency** occurs if the issuer, or any of its group entities, becomes insolvent or bankrupt, or is unable to pay its debts, or stops, suspends, or threatens to stop or suspend payment of all, or a material part, of its debts by court order.
- (4) **Enforcement proceeding** occurs if a distress, attachment, execution, seizure before judgment, or other legal process is levied on, enforced, or sued against any material part of the property, assets, or turnover of the issuer or any of its group entities, and is not discharged or stayed within 60 days.
- (5) **Winding up** occurs if an order is made or an effective resolution passed for the winding up, dissolution, or administration of the issuer or any of its group entities.
- (6) **Security enforced** occurs if an encumbrancer takes possession of, or an administrator or other similar officer is appointed for, the whole or any substantial part of the property, assets, or turnover of the issuer or any of its group entities, and is not discharged within 60 days.

The debenture-holder and/or debenture-holder representative (bondholder representative) will normally recognize and declare default. The declaration of an event of default is made in accordance with the terms and conditions of the debenture. Thai law is silent on whether the default happens during the day or at the end of the day. However, in practice, the default immediately occurs when the debenture holder or debenture holder representative (bondholder representative) declares an event of default. The precedent of a default of a debenture normally occurs on the grounds that the debenture issuer fails to pay interest and/or to repay the principal to the debenture holder when due.

³² Published in 2013 by Clifford Chance, *A Guide to Asia-Pacific Recovery and Insolvency Procedures* is available for free at the following link as part of the firm's financial markets tool kit: <http://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/guides/restructuring-and-insolvency-guide-asia-pacific.html>

Bond and Note Transactions, and Trading Market Infrastructure

A. Trading of Bonds and Notes

In Thailand, bonds and notes can be traded either OTC or on an exchange. In contrast to equities, bonds and notes are typically traded in big lots. They are also traded less frequently than equities. As such, most bonds and notes transacted in the secondary market are traded OTC via negotiations between buyer and seller. Most transactions take place over the telephone or via voice broker. At the same time, trading on the SET, via TBX, is rarely observed.

To trade debt instruments in Thailand, investors are required to trade only with dealers who are financial institutions licensed by the SEC to trade debt instruments. As of May 2015, 44 dealers had dealing licenses but only 42 of these were active dealers, most of whom were commercial banks.

B. Trading Platforms

The trading of bonds or notes in the Thai market can be done in the OTC market or on TBX. Trading in the secondary market can be grouped into two types of transactions: (i) dealer-to-dealer or inter-dealer and, (ii) dealer-to-client. For dealer-to-client transactions, investors and dealers negotiate and trade their bonds via telephone.

1. Over-the-Counter Market

The OTC market is less a trading platform and more an organized market. There is no common trading platform used in the OTC market. Trades of bonds and notes are concluded directly between institutional counterparties via phone or using the services of a voice broker or an Inter-dealer brokers. Presently, four inter-dealer brokers are active in the Thai market. Dealers may also use Bloomberg or other such global trading system providers, or an in-house trading system. Participants in the OTC market must be members of ThaiBMA.

2. Thailand Bond Exchange

TBX, a division of the SET, trades fixed-income securities, which are primarily offered to the public (no transfer restrictions) as an electronic trading platform. TBX was officially launched on 26 November 2003 (as BEX), with operations beginning on 1 March 2006. The original trading platform was obtained from the TBDC (subsequently renamed ThaiBMA). The key objective of TBX has been to develop the secondary market for bond and note trading in Thailand, in particular with an orientation toward the retail market. Trades on TBX can only be executed by exchange members, which comprise brokers and securities firms. Trading volume on TBX has remained low (at less than approximately 1% of market volume). Figure 4.1 provides a TBX website of its Market Overview page.

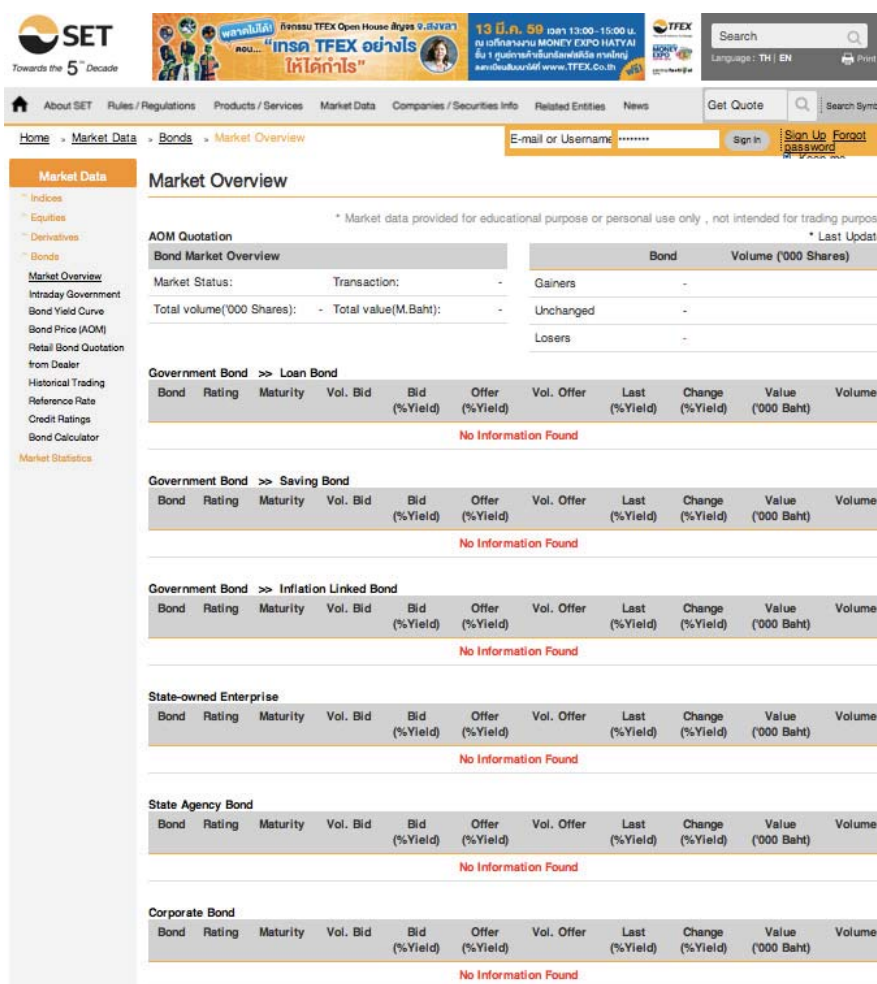
TBX's mandate includes following primary roles:

- (i) support the development of Thailand's secondary bond market,
- (ii) expand bond activities to smaller investors, and
- (iii) properly educate noninstitutional investors on additional investment instruments.

To attract bond activities in both retail and wholesale markets, TBX was granted approval from the SET to include both government bonds and corporate bond and note issues on its exchange platform. TBX has also been planning to include Asian bonds on its trading platform.

TBX has two trading methods for investors: (i) automatic order matching, and (ii) put through for the retail market when the trading volume exceeds 10,000 units (THB10 million).

Figure 4.1: Thailand Bond Exchange Market Overview



Note: Further information on bond trading procedures is available via the following link to the Stock Exchange of Thailand website: http://www.set.or.th/en/products/trading/bond/bond_trading_p1.html
 Sources: TBX Market Overview and SET website: http://marketdata.set.or.th/tfx/bexoverview.do?locale=en_US

The SET now operates bond and note trading on both the exchange platform (automatic order matching) and the non-exchange platform, the Fixed Income and Related Securities Trading System (FIRSTS), which aims to serve fixed-income dealers and institutional investors. Institutional and large-scale investors trade via FIRSTS. There are presently 28 primary dealers registered on FIRSTS.³³

C. Trade Reporting to the Thai Bond Market Association

Regardless of the choice of trading platform, all licensed dealers must report trades of bonds and notes in the Thai market to ThaiBMA within 30 minutes of execution. This practice is mandated by SEC regulations.

Bond dealers capture trade details in their own trading systems and transmit the required data to ThaiBMA via a defined interface. FIRSTS trades are reported by the SET to ThaiBMA on a continuous basis via a direct connection.

To provide transparency in the bond market, intraday transactions reported to ThaiBMA are disseminated through a screen called MARKET WATCH that is available to investors through the ThaiBMA website.

D. Market Monitoring and Surveillance in the Secondary Market

ThaiBMA monitors market movements and every trade transaction to ensure that there are no violations of regulations or ThaiBMA rules, wrongful conduct, or unfair trading occur. In addition to daily and regular monitoring, ThaiBMA also reports to concerned authorities such as the SEC and BOT.

For transactions on TBX, the SET's Market Surveillance Department is responsible for maintaining an orderly market and enhancing market transparency and market integrity.³⁴

E. Bond Information Center (ThaiBMA)

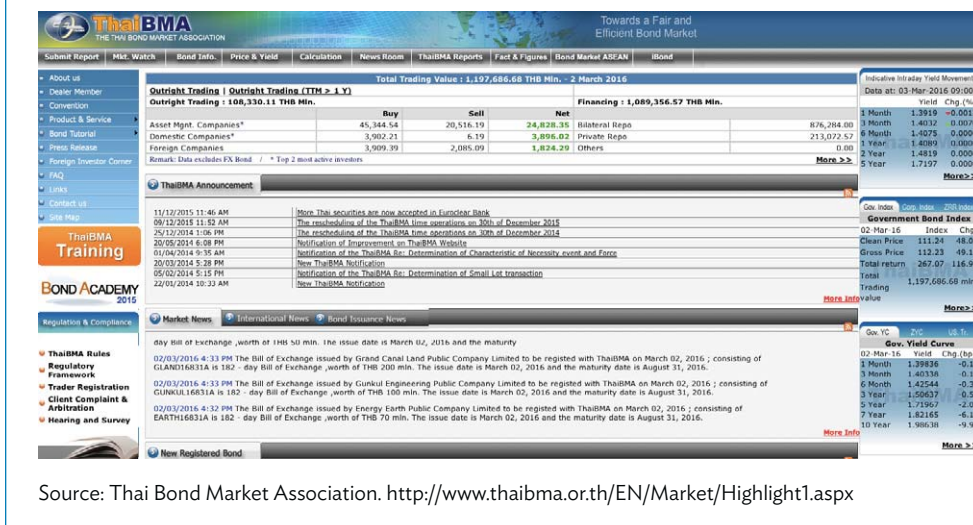
As part of its regulatory mandate, ThaiBMA also serves as the bond information center by collecting and distributing information on the bond market, including live trading information, traded data, yield curves, announcements, and additional background information. Figure 4.2 provides an example of ThaiBMA's daily bond data page. ThaiBMA's information services specifically targeted at retail investors are described in Chapter III.P.2.

To aid ThaiBMA in its dual role as a bond information center and the SRO for the bond market, SEC regulations prescribe that all publicly offered and some private placement corporate bond and note issues must register with ThaiBMA. While there is no such regulation applied on government securities, in practice, all government bond issues are automatically registered with ThaiBMA. As discussed in section C above, dealers must report traded prices to ThaiBMA.

³³ See http://www.set.or.th/en/products/member/firsts/firsts_dealer_p1.html

³⁴ For further information, please refer to the following link: http://www.set.or.th/en/regulations/supervision/surveillance_p1.html

Figure 4.2: Daily Market Highlight



Currently, ThaiBMA categorizes reported data into three types to facilitate bond market analysis and to provide a fair and valid reference to the data:

- (i) An **outright transaction** refers to a one-shot transaction under no obligation agreed upon in advance, such as the sell-and-buy-back price; generally, it refers to T+4 transactions that are settled within 4 business days.
- (ii) A **financing transaction** occurs under a repurchase agreement (repo) or sell-and-buy back condition where bonds are treated as collateral.
- (iii) **Other transactions** refer to any transaction other than outright and financing transactions, such as transactions with prior agreements, transactions that are settled after 4 business days, or transactions based on options or forward agreements.

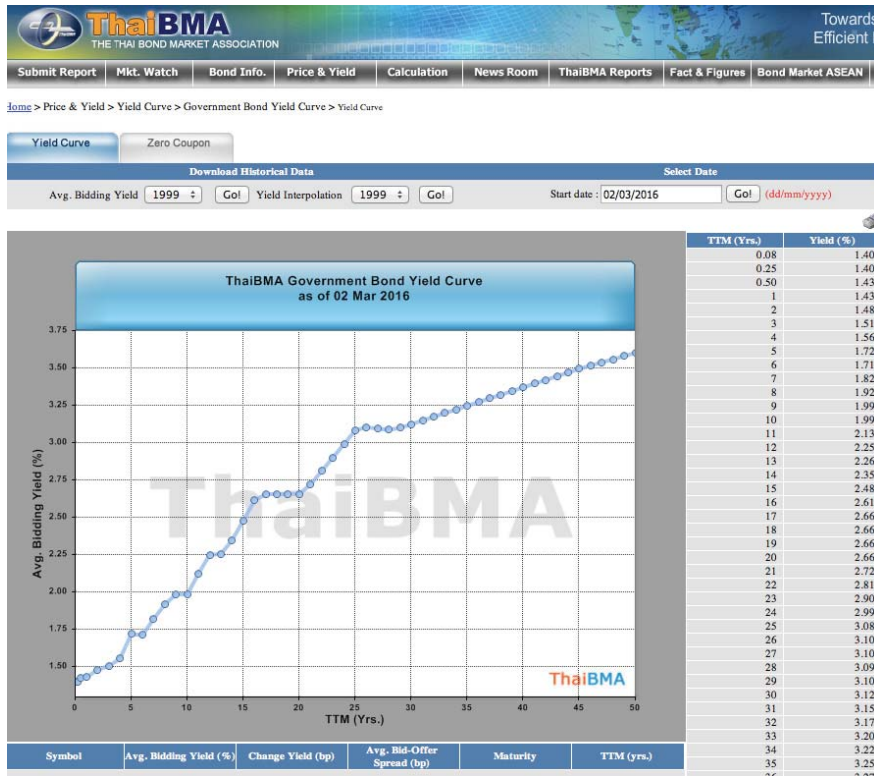
Transaction reports submitted to ThaiBMA are reviewed by the Surveillance Department prior to compilation and dissemination to the general public, and for the mark-to-market process of the bonds or notes.

F. Government Bond Yield Curve and Bond Indexes

ThaiBMA developed Thailand's government bond yield curve by using bidding yields quoted daily by primary dealers, which are published on the ThaiBMA website. ThaiBMA also publishes reference yields of SOE bonds, FIDF bonds, and Treasury bills. Yield curve information has been disseminated to the public on a daily basis since 1999. Figure 4.3 presents a Government Bond Yield Curve page on ThaiBMA's website.

In addition to the yield curve, ThaiBMA also developed the ThaiBMA Index as a tool to track market performance (Figure 4.4). The ThaiBMA Index—comprising the Total Government Bond Index, Corporate Bond Index, and the Categorized Index—is divided into several subgroups by maturity (e.g., 1–3 years, 3–7 years, 7–10 years, and more than 10 years).

Figure 4.3: Thai Bond Market Association Government Bond Yield Curve (as of 2 March 2016)



Source: Thai Bond Market Association. Government Bond Yield Curve. <http://www.thaibma.or.th/EN/Market/YieldCurve/Government.aspx>

Figure 4.4: Thai Bond Market Association Index (as of 2 March 2016)

02 Mar 2016											
Type	Open Price	High	Low	Close Price	Change	Total Return	Yield	Duration	Conv	Yield to Maturity	Yield to Maturity
Government Bond Index	111.26	112.21	111.26	112.21	+0.95	261.97	+1.01	2.86	2.86	2.86	2.86
Money Market Index	88.26	88.26	88.26	88.26	0.00	291.81	+0.00	1.87	1.87	1.87	1.87
Group 1 (1-3 Yrs)	115.17	115.17	115.17	115.17	0.00	270.91	+0.00	1.63	1.63	1.63	1.63
Group 2 (3-5 Yrs)	145.61	145.61	145.61	145.61	0.00	248.89	+0.00	1.87	1.87	1.87	1.87
Group 3 (5-7 Yrs)	170.58	170.58	170.58	170.58	0.00	218.80	+0.00	2.85	2.85	2.85	2.85
Group 4 (7-10 Yrs)	94.89	94.89	94.89	94.89	0.00	228.18	+0.00	1.73	1.73	1.73	1.73
SOE/GO Bond Index	108.24	108.24	108.24	108.24	0.00	189.13	+0.00	2.82	2.82	2.82	2.82
Money Market Index	98.21	98.21	98.21	98.21	0.00	147.83	+0.00	1.88	1.88	1.88	1.88
Group 1 (1-3 Yrs)	115.17	115.17	115.17	115.17	0.00	170.91	+0.00	1.63	1.63	1.63	1.63
Group 2 (3-5 Yrs)	145.61	145.61	145.61	145.61	0.00	148.89	+0.00	1.87	1.87	1.87	1.87
Group 3 (5-7 Yrs)	170.58	170.58	170.58	170.58	0.00	118.80	+0.00	2.85	2.85	2.85	2.85
Group 4 (7-10 Yrs)	108.24	108.24	108.24	108.24	0.00	189.13	+0.00	2.82	2.82	2.82	2.82
SOE/GO Bond Index	111.26	111.26	111.26	111.26	0.00	171.18	+0.00	2.86	2.86	2.86	2.86
Money Market Index	108.24	108.24	108.24	108.24	0.00	189.13	+0.00	2.82	2.82	2.82	2.82
Group 1 (1-3 Yrs)	115.17	115.17	115.17	115.17	0.00	170.91	+0.00	1.63	1.63	1.63	1.63
Group 2 (3-5 Yrs)	145.61	145.61	145.61	145.61	0.00	148.89	+0.00	1.87	1.87	1.87	1.87
Group 3 (5-7 Yrs)	170.58	170.58	170.58	170.58	0.00	118.80	+0.00	2.85	2.85	2.85	2.85
Group 4 (7-10 Yrs)	108.24	108.24	108.24	108.24	0.00	189.13	+0.00	2.82	2.82	2.82	2.82

Source: Thai Bond Market Association. ThaiBMA Bond Index. <http://www.thaibma.or.th/EN/Market/Index/BondIndex.aspx>

ThaiBMA bond indexes are made publicly available on a daily basis.

G. Repo Market

1. Overview³⁵

There are two types of repo transactions in the Thai market. A bilateral repo is conducted between the BOT and a primary dealer appointed by the BOT. A private repo is transacted between dealers, or between a dealer and a client, without BOT participation. Both types of repo are reported to ThaiBMA, which makes the data publically available on a daily basis. This also allows the BOT to use such data in the making and executing of policy.

There was little private repo activity when the BOT still engaged in repo operations. Under the BOT-operated repo, the BOT acted as the counterparty to all participants with no legal transfer of ownership of the bond collateral. The BOT introduced the bilateral repo market in 2000 in which the BOT would conduct monetary operations exclusively with a group of appointed primary dealers. In a bid to stimulate private repo, the BOT discontinued the BOT-operated repo market in 2008. The private repo market has enjoyed considerable growth since then. In this context, ThaiBMA played an active role in promoting market conventions for private repo, such as the use of the Global Repurchase Master Agreement (GMRA), the standard calculation of interest margin, and reference prices for mark-to-market purposes.

Growth and actual private repo activities between bank and nonbank clients have slowed significantly since 2012 when the BOT implemented a surcharge of 0.46% on all deposits, including those stemming from repo business, in a bid to replenish the FIDF. At the same time, the private repo market is supported by a policy initiative of the PDDF under the governance of the Bond Market Development Bureau at the MOF.

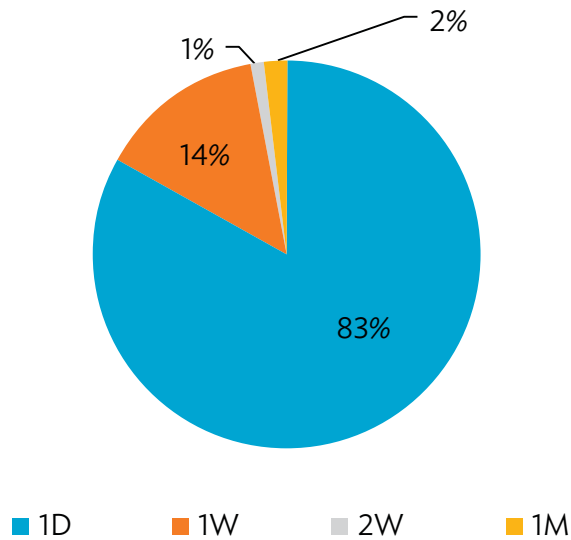
Bilateral repo is still used for open market operations by the BOT to manage or provide liquidity to the banking system. The primary dealers act as intermediaries between the BOT and the market for liquidity management. The typical tenors of a bilateral repo are overnight, 1 week, 2 weeks, or 1 month, with the shares of the total for each shown in Figure 4.5. As of June 2016, overnight private repo represents about 37% of the total private repo outstanding, while tenors of 1 month or longer represented 14%. The value of private repos outstanding totaled THB475 billion at the end June 2016 (Figure 4.6).

Most repo transactions are conducted in the OTC market, with typical value dates at 3 plus zero (3-day settlement for first leg, same day for second leg), 2 plus 1, or 2 plus 2, but the tenor can be tailored, usually up to 1 month. Banks and other financial institutions may act as a lender or borrower to counterparties in both Thai baht and foreign currencies.

At the same time, private repo transactions may also be entered into using the repo services of TSD. The repo service is similar to the securities borrowing and lending (SBL) services provided by TSD. (For more details on SBL, refer to section H in this chapter.) This repo service requires the maintenance of dedicated accounts at TSD for the transfer of the debt securities as collateral.

³⁵ Information adapted by ADB consultants for SF1 from ASEAN+3 SRO Working Group case study on ASEAN+3 repo markets (2014).

Figure 4.5: Tenure of Bilateral Repo (as of 26 February 2016)



1D = 1 day, 1W = 1 week, 2W = 2 weeks, 1M = 1 month.

Source: Thai Bond Market Association.

Figure 4.6: Outstanding Value of Private Repo (as of 26 February 2016)



THB = Thai baht.

Source: Thai Bond Market Association.

2. Acceptance of Standards

The GMRA is widely adopted among market participants in Thailand, and typically executed under the official Thailand Annex to the GMRA 2000, which was endorsed by TBDC (subsequently renamed ThaiBMA).

The GMRA has been used in Thailand since the start of the private repo market in 2006, but after a few years, market participants felt the need to introduce some local standard agreement to further stimulate the private repo market. This led to the introduction of the Thailand Annex, with all participating financial institutions in Thailand having since adopted the GMRA. In 2010, the BOT initiated and sponsored the development of a standard Thai-language repo master agreement to increase the penetration of repo transactions in the smaller financial institution and nonfinancial institution segments. This standard Thai-language repo master agreement was expected to help lower legal and operational costs of each institution, and to a certain extent, lower operational risk if widely used among market participants.

3. Specific Repo Practices

This section summarizes a number of relevant practices in the repo market in Thailand.

(a) Type of repo

In Thailand, the repo practice follows the classic type (outright sale and purchase) in that the repo transaction is considered to be an agreement for a transaction that involves a purchase of securities from the seller of said securities at an agreed date and price. The lender provides cash to the borrower, and the borrower in turn provides the securities as collateral for the lender. The borrower will (re)purchase said securities from the lender at an agreed time and price.

From a legal perspective, securities are transferred to the lender so the lender can sell the securities in the market. In case of default, the lender can liquidate the bonds in the market to settle any obligations of the borrower.

(b) Eligible debt securities

Eligible debt securities for repo transactions include THB-denominated government and investment-grade corporate bonds. Most of the collateral used consists of short-term instruments, with a representative breakdown at about 75% BOT bills, 25% government bonds, and 0.3% SOE bonds.

(c) Margin

Variation margin over the tenure of the repo is typically determined in cash. If there is interest payable on the cash margin, such interest will be included in the calculation of the cash margin.

As for the calculation of the margin requirements for participants entering repo transactions, both lender and borrower have an obligation to monitor market movements, and both are obligated to provide a margin if the price movement is greater than a preset threshold, which is determined as follows:

- (i) $\text{market value} = (\text{gross price \%}) * (\text{current par}) * (\text{number of units})$
- (ii) $\text{required securities value} = (\text{purchase price} + \text{accrued interest}) / (1 - \text{initial margin})$
- (iii) $\text{threshold} = \pm \text{THB}500,000$
- (iv) $\text{market value} < \text{Required securities value}$
- (v) $\text{margin exposure} = \text{market value} - \text{required securities value}$
- (vi) $\text{margin exposure} > \text{threshold} \Rightarrow \text{call margin}$

(d) Accounting and tax treatment

By definition, with this type of repo transaction the securities are still booked in the borrower's balance sheet even if the securities are already transferred to the lender. Hence, the securities remain in the account of the borrower.

There is no capital gain on the repo because there is no real trade in the debt securities used as collateral. Consequently, there is no capital gains tax applicable on the securities transfer for the lender, but the income from the repo fee is subject to corporate income tax and may be subject to withholding tax for related income (coupon payment) depending on the tax status of the borrower. In case of coupon payment, the lender will receive the coupon on behalf of the borrower; therefore, the lender must transfer all coupons received before the withholding tax can be deducted at the borrower's end.

(e) Market participants

Market participants in private repo transactions include the 10 primary dealers appointed by the BOT, financial institutions, retail investors (Thai nationals only), and institutional investors such as asset managers and insurance companies. Any securities company authorized by the SEC can participate in repo transactions. Retail investors may also participate in private repo transactions, in which case repo is only available using government bonds and corporate bonds of investment grade.

Foreign bank branches in Thailand may participate in private repo transactions; however, as part of BOT's exchange control policy, there is no direct access for foreign investors or intermediaries to the repo market.

H. Securities Borrowing and Lending

SBL is possible in Thailand, including for debt instruments, and conducted either using the services of TSD or directly between trading counterparties.

4. Thailand Securities Depository³⁶

SBL transactions using the services of TSD are largely conducted in the process of settlement fail management. Depository members, such as brokers or custodians, who settle fixed-income transactions on behalf of their clients may require short-term coverage of settlement obligations such as when a preceding transaction does not settle in time to provide sufficient securities holdings. In these transactions, TSD acts as either an agent for the lender and the

³⁶ For further details, please refer to the following link: <http://www.set.or.th/tsd/en/service/repo.html#6>

borrower (referred to as a put-through transaction) or as the lender of last resort (referred to as a settlement coverage transaction). In the latter case, if no direct counterparty can be found to lend the required debt securities, TSD, acting as principal, will furnish the required debt securities from its own lending pool.

In the case of a put-through transaction, TSD will match the demand and supply from borrowers and lenders, and manage the variation margin requirements throughout the lifetime of the SBL transaction.

Both types of SBL transactions can be captured directly in TSD's Securities Borrowing and Lending System through the access screen of depository members.

In order for a depository member to execute an SBL transaction, the member must have applied for the SBL services, opened dedicated SBL and collateral accounts, and complied with TSD's SBL rules and procedures.

5. Direct Transactions

In direct SBL transactions, counterparties agree on the required debt securities, the collateral to be posted, and other such conditions via phone or other trading systems. The transfer of the borrowed securities and the related collateral are typically instructed and settled as individual free-of-payment transactions at TSD.

Direct SBL transactions may be subject to specific agreements between counterparties on the provision of collateral, terms of the loan, and applicable fees and costs.

6. Eligible Collateral

The eligible collateral is similar for both TSD SBL and direct SBL transactions. TSD and market counterparties accept:

- (i) Thai baht cash,
- (ii) Thai government securities (specific conditions and maturity requirements may apply),
- (iii) securities issued by SET-listed companies, and
- (iv) letters of guarantee.

TSD, as well as market counterparties, may apply different haircuts to the value of the borrowed debt securities for the purpose of determining the value of collateral, depending on the type and nature of the underlying securities.

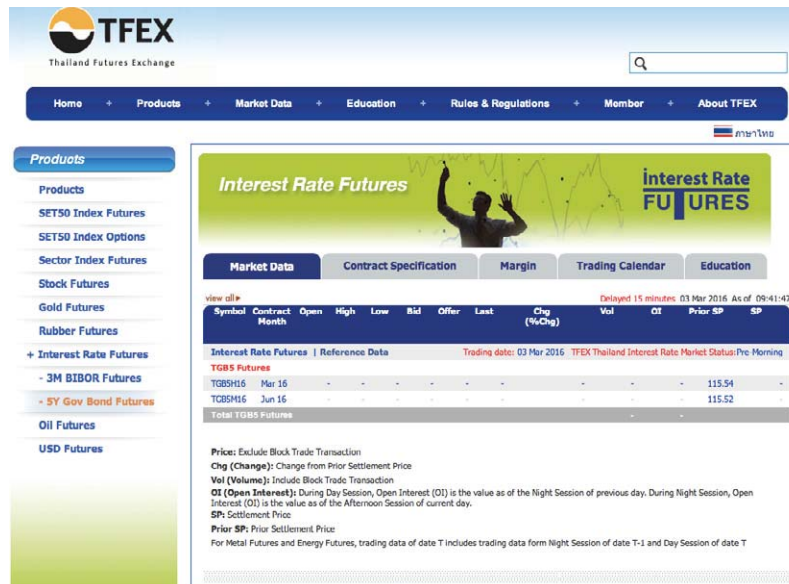
I. Interest Rate Futures

Thailand Futures Exchange (TFEX), a subsidiary of the SET, was established on 17 May 2004 as a derivatives exchange. TFEX is governed by the Derivatives Act B.E. 2546, 2003 and is under the supervision of the SEC.³⁷ TFEX is allowed to trade futures, options, and options on futures for underlying assets, which include bonds and interest rates.

³⁷ For more details, please refer to the TFEX website: <http://www.tfex.co.th/en/about/glance.html>

In 2010, the TFEX launched its first interest rate-based derivatives product (Figure 4.7). At present, TFEX trades two contracts each of short-term (3-month) BIBOR interest rate-based futures (BB3Futures) and long-term (5-year) government bond futures (TGB5 Futures).

Figure 4.7: Thailand Futures Exchange Interest Rate Futures Page (as of 3 March 2016)



Source: Thailand Futures Exchange. Interest Rate Futures. <http://www.tfex.co.th/en/products/5Y-GB-futures-spec.html>

Trading data on the TFEX website are delayed by 15 minutes.

To trade on TFEX, investors need to place orders with securities firms licensed by the SEC who are TFEX members, since only members can access the trading platform. Contracts can be traded through an Electronic Trading Transaction, with automated matching on price-then-time priority, or in the form of a Block Trading Transaction, for large or negotiated deals. The maximum order volume of a trade is 100 contracts, and the minimum order for block trades is 20 contracts. The value of a contract is THB10 million.³⁸

TFEX traded interest rate futures are accessible on the following:³⁹

Bloomberg	TORA<COMDTY>
Thomson Reuters	BB3my
	0#BB3:
	BB3TVO.FX
Six Telekurs	BB3myy, 825

³⁸ For further details, please refer to the following link: <http://www.tfex.co.th/en/products/3M-BIBOR-futures-spec.html>

³⁹ Examples provided are for a BB3 contract.



Description of the Securities Settlement System

This chapter, as included in the original ASEAN+3 Bond Market Guide published in 2012, has been discontinued in favor of a more comprehensive and updated description in the Phase 2 Report of ABMF Sub-Forum 2 (SF2), Information on Transaction Flows and Settlement Infrastructures, dated 13 June 2014. The SF2 Phase 2 report contains information on the post-trade features of the Thai bond market, its market infrastructure and settlement system, interest payment and redemption practices, as well as market and message standards (pp. 241–53). In addition, the SF2 Phase 2 report contains detailed infrastructure and flow diagrams for Thailand (pp. 586–610).

The SF2 report is available at <https://asianbondsonline.adb.org/> as well as through a number of mirror sites.⁴⁰

⁴⁰ See <http://www.adb.org/publications/asean3-information-transaction-flows-and-settlement-infrastructures>

Bond Market Costs and Taxation

This chapter details the typical costs incurred by issuers and investors in the Thai bond market, with an emphasis on costs associated with bond and note issuance and settlement.

For ease of reference, the descriptions of the types of costs are given in the context of the actions to be taken by issuers or investors (as explained in this document), and follow the life cycle of a bond or note in the Thai bond market.

A. Costs Associated with Bond and Note Issuance

1. Baht Bond Concept (issuance of THB-denominated bonds and notes by nonresidents)

A nonresident (foreign) entity may only issue THB-denominated bonds and notes following the approval of the MOF's PDMO under the so-called Baht Bond concept. The PDMO does not charge a fee for applications under the Baht Bond approval process. However, in case the issuer decides to appoint an intermediary (e.g., a Financial Adviser) to handle or assist in the application process, a service fee should be expected.

2. Filing of Registration Statement or (Draft) Offering Circular with the Securities and Exchange Commission (mandatory)

All bond and note issuances in Thailand require the approval of, and the filing of a Registration Statement with the SEC. This issuance application and approval process differs between a public offer (Filing of Registration Statement and [Draft] Prospectus) and a private placement (Filing of [Draft] Offering Circular). For details and conditions of the application processes, please refer to Chapter II.F.

The SEC applies a fee for the filing of either form of Registration Statement, payable on the day of its submission. The fee amount and other considerations are prescribed in a corresponding SEC Notification, Notification of the Office of the Securities and Exchange Commission Sorbor 28/2547 Re: Provisions on Fees for Filing Registration Statement, Permission by Registration and All Applications for Obtaining Approval.

Similar to other actions in the regulatory process for bond and note issuance in Thailand, should the issuer need to appoint intermediaries to facilitate submissions of applications and supporting information, such services would add to the cost of the process

3. Registration with the Thai Bond Market Association

The registration process with ThaiBMA includes a capped one-time registration fee and a capped annual fee for the first 6 years of the tenure of the bond or note (Table 6.1), which are charged by ThaiBMA to the issuer.

Table 6.1: Thai Bond Market Association Registration Fees

	Registration Fee
Upfront fee	0.01% of issue size (Min 35,000 Baht, Max 350,000 Baht)
Annual fee	<ul style="list-style-type: none"> - 1-5 years -> 10,000 + 0.001% of issue size (max 100,000 Baht/year) - 6-7 years -> 10,000 + 0.0005% of issue size (max 100,000 Baht/year) - >7 years -> no fee
Total registration fee is capped at 0.02 of issue size	

Source: Thai Bond Market Association.

4. Financial Adviser Fee (optional)

As a typical market practice, issuers in the Thai bond market tend to appoint a Financial Adviser for the purpose of filing issuance approval applications with the respective regulatory authorities. The Financial Adviser may be appointed in addition to an underwriter, and may also carry out other chargeable services for the issuer.

There is a fee for such services provided by the Financial Adviser, which should be expected to follow established market practice and may be subject to negotiations between the issuer and Financial Adviser.

5. Underwriter Fee (optional)

Issuers are not required by law to appoint an underwriter. However, larger private placements and public offers of corporate bonds and notes may require the services of one or more underwriters to place the bonds and notes with institutional investors or distribute the issuance to the public.

Underwriters charge a fee, typically commensurate with the effort and risk of taking over parts or all of a bond or note issue from the issuer. This fee or service charge should be expected to follow established market practice and may be subject to negotiations between the issuer and underwriter(s).

B. Ongoing Costs for Issuers of Corporate Bonds and Notes, and Commercial Paper

1. Interest Payment and Redemption Fee at the Thailand Securities Depository

- (a) For processing of an interest payment, TSD collects a fee for the compilation of the bondholders' list on the record date at the rate of THB5 per transaction, with a minimum fee of THB500 per security.

- (b) For the processing of a redemption, TSD collects a fee for the compilation of the bondholders' list on the record date at the rate of THB5 per transaction, with a minimum fee of THB500 per security.

2. Contribution to the Financial Institutions Development Fund

The BOT levies a contribution to the FIDF on all Thai baht fund-raising activities by domestic financial institutions in Thailand, in addition to the premium on customer deposits payable to the DPA (see Chapter III.P). FIDF-relevant activities include the issuance of bonds and notes denominated in Thai baht, borrowing transactions and repo. Domestic branches of foreign financial institutions are also subject to the levy. For the relevance for a bond or note issuance by foreign financial institutions and the onlending to their domestic branch, please refer to Chapter II.M.

The contribution is to be remitted to the BOT semiannually, in July and January for the preceding 6-month period.⁴¹ Outstanding bonds and notes are to be included in the average balance of fund-raising activities during their tenure.

C. Costs Associated with Deposit and Withdrawal of Bonds and Notes⁴²

TSD acts as the central depository and settlement center for most of the corporate bonds and notes issued in the Thai market. The service provision by TSD includes the following charges:

1. Deposit Fee

TSD applies a deposit fee of THB10 for each deposit transaction of securities, including bonds and notes, into TSD by one of its members, whether for their own or a client's account. Investors need to deposit securities via a TSD member.

2. Withdrawal Fee

TSD also collects a withdrawal fee from TSD members for withdrawing securities, including bonds and notes, from the book-entry system. A withdrawal of government or corporate bonds or notes is charged at the rate of THB35 per transaction in a single depository account; other securities are charged at THB65 per transaction. Redemption does not count as a withdrawal.

D. Costs for Account Maintenance at the Thailand Securities Depository

1. Account Maintenance Fee at the Thailand Securities Depository

TSD collects a maintenance fee on the basis of the remaining securities in the depository account on a monthly basis. Since TSD does not maintain depository accounts for individual

⁴¹ For the current rate of contribution, please see https://www.bot.or.th/English/BOTStoryTelling/Pages/FIDF_StoryTelling_FI.aspx

⁴² For further details, please refer to the following link: <http://www.set.or.th/tsd/en/service/service2a.html#9>

investors (omnibus account concept), TSD charges the fee to participant members (brokers and custodians) who maintain accounts under their name. Brokers and custodian in turn tend to defray these costs as part of their custody or safekeeping charges to their clients.

The account maintenance fees differ by type of securities. Corporate bonds and notes attract a fee of THB1 per par value unit (e.g., THB1,000 denomination), while government and quasi-government bonds, bills, and notes are charged at THB0.25 per par value unit.

E. Costs Associated with Bond and Note Trading

1. Brokerage Fees

Securities brokers who are SET members charge brokerage fees or commission on the buying or selling of securities, including fixed-income securities listed on TBX or the SET's main board.

Following implementation of the SET's plan to fully liberalize the securities business in January 2012, the brokerage fee or commission is freely negotiable between broker and client, but attracts a value-added tax (VAT) of 7%.

F. Costs Associated with Bond and Note Settlement and Transfer

TSD acts as the central depository and settlement center for most of the corporate bonds and notes issued in the Thai market. The service provision by TSD includes the following charges:

1. Transaction Fee (Transfer Fee)

TSD collects a transaction fee (or transfer fee) for each settlement transaction in the book-entry system (through the accounts maintained by TSD participants). TSD charges the fee to participant members (brokers and custodians) who in turn tend to defray these costs as part of periodic transaction fees charged to their clients.

The transaction (transfer) fee for bonds and notes is THB10 for each instance.

Transfers of securities as a result of TSD repo or securities borrowing and lending transactions are exempt from this transaction or transfer fee since a separate repo or SBL fee is already being levied.

2. Repo and Securities Lending Fee

TSD charges a fee for the transactions it facilitates under its repo and SBL services. Put-through transactions are charged at 5% of the lending fee (with a minimum fee of THB100), while settlement coverage transactions are charged at 10% of the lending fee of the transaction (with no minimum fee). The fees are collected from both borrower and lender.

G. Taxation Framework and Requirements

Residents and nonresidents investing in the Thai market are subject to a number of duties and taxes on fixed-income securities as shown in Table 6.2. The application of the various duties and taxes is explained in subsequent sections.

Table 6.2: Duties and Taxes on Fixed-Income Securities

Duties and Taxes	Type of Bond	Tax Rate
Withholding Tax	Government	Exempt or 15% ^a
	Corporate	15%
Capital Gains Tax	Both	0%–15% subject to DTA
Stamp Duty	Both	n.a. ^b
Other Taxes—VAT	Both	7%

DTA = double taxation agreement, n.a. = not applicable, VAT = value-added tax.

^a For application of exemptions, please refer to sections below; otherwise, a withholding tax of 15% will apply.

^b For applicable conditions, please refer to section G.3 in this chapter.

Source: ADB Consultants for SF1 based on data from PricewaterhouseCoopers Services.

1. Withholding Tax

The tax liability of incomes from investments in debentures is classified into three categories: (i) interest income; (ii) capital gains; and (iii) discount, or the difference between the redemption price and bid price, and bid price in the case of debentures that yield no interest but are sold below the redeemed value. The tax is determined by the type of income and the nature of the investor or income earner. Generally, payers withhold income tax upon payment at rates of 15% on natural persons, 1% on juristic persons, and 10% on foundations or associations.

Investments in debentures by mutual funds are exempt from income tax on capital gains because mutual funds are juristic persons separate from fund management institutions. All benefits that mutual funds receive in interest, capital gains, and discounts are exempt from tax computation. But unit holders of mutual funds are liable to income tax applicable to natural or juristic persons, as the case may be, on dividends or profit sharing of the investment units in the same manner as the tax liability of investments in equity instruments.

For applicable exemptions from withholding tax on debt securities, please refer to section G.6 in this chapter.

2. Capital Gains Tax

Capital gains from investment in debt securities are typically assessed as ordinary income and subject to withholding tax as mentioned in the previous section. Exemptions from capital gains tax exist for non-interest-bearing government bonds and corporate debt instruments.⁴³

⁴³ Please refer to <http://www.pwc.com/th/en/tax/assets/2012/thai-tax-2012-booklet.pdf>

There is no capital gains tax applicable to securities transfers that are part of a repo transaction.

Capital gains cannot be offset with capital losses.

3. Stamp Duty

A stamp duty on debt securities is applied to physical certificates of nonlisted securities only. The stamp duty rate is THB1 for every THB1,000 of the actual trade value, not on the face value of the debt securities certificates.

4. Specific Business Tax

A Specific Business Tax (SBT) is collected from individuals, groups of persons who are not juristic persons, and any other juristic persons on income derived from engaging in banking, finance and securities, credit foncier, life insurance, pawn brokerage, semicommercial banking, and real estate. Banking, financial, and securities institutions pay SBT on interest income, discounts, fees, service fees, and gross profits-before-expenses from transactions in any bills or debentures, foreign exchange, drafts, or overseas remittance. The SBT on incomes relative to bonds is levied at 0.01% and is to be remitted to government authorities.

5. Value-Added Tax (VAT)

In principle, all fees for services provided by intermediaries in the Thai capital market to their resident clients are subject to VAT. Nonresident investors do not pay VAT; hence, invoices for service provisions by domestic bond market institutions do not include VAT on such services.

6. Double Taxation Agreements

Double taxation agreements (DTAs) are treaties signed by Thailand with other countries that specify tax exemption on income derived from investments, whereby investors are only liable to pay income tax in one country as a means of inducing foreign investment. A DTA applies to persons who are residents of the contracting states and applies to direct taxes, including personal income tax, corporate income tax, and petroleum income tax. Other indirect taxes such as VAT, SBT, and excise taxes are not covered by DTAs. DTAs also prescribe a ceiling rate for tax collection, which the source country must not exceed.

7. Tax Exemption for Nonresident (Foreign) Investors

Under Ministerial Notifications No. 249 B.E. 2548, 2005 and Royal Decree No. 429 B.E. 2548, 2005, individuals, juristic companies, and partnerships established under foreign law and not operating a business in Thailand are exempted from income tax on the following assessable incomes:

- (i) interest received from government agencies bonds,
- (ii) the difference between the redemption price and selling price of government agency bonds issued and sold the first time at a price lower than the redemption price (discount), and
- (iii) benefits received from the transfer of government agency bonds (capital gains).

However, the withholding tax exemptions on income and capital gains from government securities trading were revoked, effective 13 October 2010, in line with other capital control measures. Nevertheless, the withdrawal of previous exemptions should not affect specific provisions for preferential tax treatment in prevailing DTAs. Investors are encouraged to seek the advice of professional tax advisors with regard to their specific tax situation.

Market Size and Statistics

The original ASEAN+3 Bond Market Guide was published in April 2012 and included 11 pages of Thai bond market statistics, including historical data such as bond holdings, bondholder distribution, outstanding amounts, and trading volumes. Not surprisingly, this data became stale soon after publication.

Since the ASEAN+3 Bond Market Guide is most likely to be updated on a biannual basis, it is not the best channel for the dissemination of market statistics. Hence, a chapter comprising bond market statistics has been discontinued and replaced with a list of recommended sources for detailed, accurate, and current information on the Thai bond market. These sources are listed below in alphabetical order.

- *AsianBondsOnline* (an ASEAN+3 initiative lead by ADB)
<https://asianbondsonline.adb.org/thailand.php>
 - Market-at-a-Glance
 - Data (yields, indicators, ratings, and historical data)
- Bank of Thailand
<https://www.bot.or.th/English/Statistics/FinancialMarkets/Pages/StatDebtSecurities.aspx>
 - Debt securities sales, redemptions, and amounts outstanding (government bonds)
 - Includes historical data
- Ministry of Finance of Thailand
<http://dataservices.mof.go.th/Dataservices/PublicDebtOutstanding?language=EN>
 - Public debt outstanding (government bonds by issuance type)
 - Includes historical data
- Thai Bond Market Association
<http://www.thaibma.or.th/EN/Home.aspx>
 - Bond information (issuer, issue, and documentation)
 - Price and yield data
 - ThaiBMA reports (daily, weekly, monthly, and annual summary)
 - Facts and figures (summary statistics)
 - Includes historical data

Presence of an Islamic Bond Market

A. Status of the Islamic Bond Market in Thailand

Thailand is in the relatively early stages of developing an Islamic bond market. Regulations for the issuance and offering of *sukuk* were announced in January 2011. The regulatory framework, like that for all other types of securities, is the SEA and applicable SEC securities regulations. Due to the nature of *sukuk*, the Trust for Transactions in Capital Market Act also applies.

B. Regulations Applicable to *Sukuk*

Regulations on the issuance of *sukuk* in Thailand do not materially differ from those of other debt instruments and are in fact subsumed under applicable SEC regulations on debt instruments. *Sukuk* may be issued as public or private offers. According to current regulations, issuers of *sukuk* can only be Thai entities. However, the SEC is in the process of amending the relevant notifications in order to allow foreign entities to issue *sukuk* in Thailand. Issuance approval criteria and processes, filing criteria, credit rating requirements, and the need to register with ThaiBMA are the same, as is the taxation treatment. However, *sukuk* do not have a shelf registration concept.

C. Regulations Specific to *Sukuk*

A Shariah advisor has to certify whether the *sukuk* structure is Shariah-compliant. A financial advisor has to certify the qualification of the Shariah advisor, and a legal advisor has to certify that a trust deed for the trust underlying the *sukuk* is enforceable under Thai law.

D. Infrastructure for *Sukuk*

Sukuk typically use the same infrastructure as bonds and notes, including the trading venues such as the OTC market or TBX on the SET.

E. *Sukuk* Issuance

The Islamic Bank of Thailand (domestically known as ibank) was established in 2003 through the Islamic Bank of Thailand Act B.E. 2545, 2002 as an SOE under the MOF. It is administered by a board of governors and includes an advisory council on Islamic banking.⁴⁴ The Government of Thailand intends to issue more types of bonds and notes, including *sukuk*.

⁴⁴ For more details, please refer to the following link: <http://www.ibank.co.th>

Thai Bond Market Challenges and Opportunities

This chapter discusses some of the real and perceived challenges facing the Thai bond market and its participants, and describes potential mitigating factors or market developments that could address these challenges in an appropriate manner.

A. Challenges

1. Limited Investor Universe

Corporate investors remain few. Therefore, transactions occur within the cluster of a small number of major investors. At the same time, retail investors lack a sound understanding of the Thai bond market. They are content with commercial bank deposits rather than with other kinds of investment. As the government presently provides an unlimited guarantee on deposits at commercial banks; thus, many depositors choose a lower return for the security of their deposits. Meanwhile, the government has already endorsed the setting up of the DPA. As a consequence, there will likely be a shift of deposits away from small banks, and some of these deposits should flow into the bond market

2. Limited Issuance of Corporate Bonds and Notes

Compared to the number of companies listed on the SET, only a limited number of private enterprises (about 200 as of January 2015) issue bonds or notes, though the number has trended higher in recent years. At the same time, commercial banks have been offering loans at relatively low interest rates and under attractive conditions to maintain their corporate customers of good credit standing. Hence, these companies may not see the benefit of a bond or note issuance relative to reducing funding costs.

3. Interest Rate Hedging Opportunities

Interest rate hedging opportunities in the Thai market exist. The futures exchange, TFEX, which is a subsidiary of SET, trades 3-month, 6-month, and 5-year interest rate futures based on the BIBOR interest rate and Thai government bonds. Details on TFEX and its offerings are available in Chapter IV.

The challenge for interest rate hedging relates to limited futures trading volume and the general lack of participation by corporate issuers and investors

4. Thai Financial Reporting Standards

Thai Accounting Standards and Thai Financial Reporting Standards (TFRS) are announced and maintained by the Thailand Federation of Accounting Professions.

TFRS substantially converge with International Financial Reporting Standards (IFRS), yet revisions to the treatment of financial instruments and other accounting categories are still pending and expected to be addressed in 2016.⁴⁵

While this poses no challenge for Thai corporates that would like to issue and list bonds and notes in Thailand only, it can be a hindrance for those issuers in the Thai market (both Thai and foreign) that would like to pursue a listing at a regional or overseas listing place, for example, to achieve higher visibility and/or attract a different investor universe. In case such a listing place does not accept TFRS, a listing may not be possible without additional efforts toward adoption of acceptable standards.

Issuers, intermediaries, and listing places in ASEAN+3 markets have spent considerable energy on mapping and understanding financial reporting standards from each other's jurisdictions. ABMF research indicates that the treatment and disclosure of relevant information is often the same, or very similar, across jurisdictions, particularly with respect to bond and note issuance.

At the same time, foreign issuers have been able, for THB-denominated issuances, to elect whether to submit and report financial and disclosure information according to IFRS, International Standards on Auditing, United States Generally Accepted Accounting Principles, TFRS, reconciled IFRS, or any other accounting standard recognized by the SEC.

B. Opportunities

1. Accessing Additional Investor Universes

A number of regional initiatives in ASEAN and ASEAN+3 are targeting the inclusion of investor types, which have previously focused their attention on government bonds issued in Thailand and other markets in the region. The intention of these initiatives is to enhance transparency and accessibility for different investor types, including mutual funds and unit trusts, pension funds, and provident funds. In many markets, these funds are subject to prudential regulations that may prescribe the listing or registration of any securities, including bonds and notes, to be considered as investments.

At the same time, the emergence of high net worth investors as a dedicated investor class and their eligibility to access more complex products has led to the creation of specific products aimed at such investors alongside traditional professional investors. The inclusion of high net worth investors and the catering to their specific investment needs is seen as a major step toward broadening and deepening the available investor base in the Thai bond market.

2. General Regulatory Developments

Since the global financial crisis, regulators have been strengthening laws and regulations across many areas of capital and financial markets. Of particular interest have been banking regulations and the focus on risk-weighted capital. The outcomes for financial

⁴⁵ The IFRS application profile for Thailand is available from the website of the IFRS Organisation at <http://www.ifrs.org/Use-around-the-world/Documents/Jurisdiction-profiles/Thailand-IFRS-Profile.pdf>

markets include a limitation on what banks can or are willing to lend, to whom, and under what circumstances. A number of these regulatory initiatives may, in consequence, lead to a rebalancing of funding options in the corporate sector from bank loans to the capital markets.

While not unique to Thailand, this development could raise the level of interest among potential domestic issuers to consider raising funds via bond or note issuance and to diversify their debt portfolio. Increased interest, coupled with a broader and deeper investor base, might also have a beneficial impact on funding costs.

3. Increasing Demand for Investable Assets

Recent research indicates that the Thai economy annually generates investment liquidity amounting to approximately USD10 billion. These funds are seeking adequate opportunities among available investment and savings products in the market. As Thailand's savings pool expands, a large portion of these savings is expected to flow into mutual funds and unit trusts, many of which will in turn invest in debt securities. Yet, research suggests that market participants are concerned with the shortage of quality THB-denominated issuances.

4. Introduction of a Medium-Term Note Program

The SEC is in the process of evaluating the introduction of an MTN Program, or a Note Issuance Program, in the Thai market in line with established standards and practices in international bond markets.

Presently, MTN issuances are not available in the Thai market. At the same time, current regulations offer the availability of a shelf-registration concept for the issuance of THB-denominated bonds and notes by domestic issuers.

Due to the familiarity of international issuers—including large Thai corporates with a regional or international profile—with international bond markets, particularly MTN issuance, this move could contribute to the increased attractiveness of the Thai market.

5. Mekong Subregional Bond Issuance

A key opportunity for the Thai bond market manifested itself in 2013 when the Lao PDR issued a government bond in Thailand, which was the first of its kind. The success of the Lao PDR issuance and the nascent state of bond markets in Cambodia, the Lao PDR, and Myanmar—despite the rapid development of these economies—may lead more government and corporate debt issuers in these neighboring countries to tap the well-established Thai bond market.

Investor interest in the Mekong subregional markets and the opportunity to buy bonds in either Thai baht or US dollars rather than in domestic currencies with limited convertibility, coupled with a general familiarity with the culture and business environment of the subregion, can help facilitate the creation of a receptive investor and issuer universe centered around the bond market in Thailand.

6. ASEAN+3 Multi-Currency Bond Issuance Framework

The implementation of AMBIF is expected to benefit not only AMBIF issuances, but the Thai bond market at large. ABMI and Thai policy bodies and regulatory authorities are focused on achieving a suitable balance between bank loans and capital market funding opportunities for corporates. AMBIF was created to provide an additional bond and note issuance avenue for these corporates. In Thailand, AMBIF focuses on the issuance of PP-AI, which was introduced by the SEC in 2012. The Thai market continues to generate the most interest from potential AMBIF bond and note issuers who may already have substantial commercial operations in the country and would like to issue bonds or notes and use the Thai baht proceeds to diversify into baht-funding options, eliminate foreign exchange risk, or more effectively manage their debt portfolio. At the same time, the nature of AMBIF and the specific provisions for professional investors are likely to attract attention from new institutional (professional) investors in Thailand and other regional markets.



Recent Developments and Future Direction

A. Recent Developments

1. Thailand Financial Instruments Information Center

In December 2010, the BOT signed an agreement with the SEC, SET, ThaiBMA, and the PDMO to create the Thailand Financial Instruments Information Center (TFIIC). TFIIC is part of the Thai government's 5-year Capital Market Master Plan, 2009 and aims to collect information on financial instruments by related sources, share information, and provide linkages among related agencies.

The vision for TFIIC is for it to become an accessible and standardized securities data center for Thailand. Its mission parameters include⁴⁶

- (i) providing complete, international-standard securities information for ready use in economic and policy analysis;
- (ii) disclosing useful information to licensed securities market stakeholders through an easily accessible channel;
- (iii) effectively coordinating multiple agencies covering the securities market in developing the financial securities market; and
- (iv) acting as the communications channel on financial securities between these multiple agencies covering the securities market and the public.

TFIIC has been operating since 2011.

2. ASEAN Disclosure Standards Scheme

Effective 1 April 2013, securities market regulators in Malaysia, Singapore, and Thailand implemented the ASEAN Disclosure Standards Scheme (the Scheme) for multi-jurisdictional public offerings of equity and plain debt securities in ASEAN.

The Scheme aims to facilitate fund-raising activities as well as to enhance the investment opportunities within ASEAN capital markets. Issuers offering equity and plain debt securities in multiple jurisdictions within ASEAN will only need to comply with one single set of disclosure standards for prospectuses, known as the ASEAN Disclosure Standards, bringing about greater efficiency and cost savings to issuers. The Scheme is benchmarked against the International Organization of Securities Commissions' disclosure standards on cross-border offerings. In addition, the Scheme fully adopts the IFRS and the International Standards on Auditing.

⁴⁶ Adapted for this document from the TFIIC website at <http://www.tfiic.org/en/Content/about/vision.html>

The Scheme operates on an opt-in basis and ASEAN members will adopt the Scheme as and when they are ready to do so. Malaysia, Singapore, and Thailand are the first three ASEAN jurisdictions to implement the Scheme.

3. Securities and Exchange Commission Capital Market Knowledge Center

In March 2015, the SEC opened the SEC Capital Market Knowledge Center as a comprehensive source of financial and investment information for business enterprises and the public at large. The SEC Capital Market Knowledge Center is housed at the SEC and provides an overview of fund mobilization and capital market mechanisms. The main purpose of the knowledge center is to educate the public about the capital market and its products. Information on bonds available at the center is on the general nature of each type of bond and the bond market at large.

4. Mizuho Pilot under ASEAN+3 Multi-Currency Bond Issuance Framework

On 28 September 2015, Mizuho Bank issued the first ever bond under AMBIF (see also B.2 in this chapter, and Chapter IX.B.6) in Thailand. The bond was issued under the Baht Bond concept, which is explained in the course of the Thailand Bond Market Guide.

Figure 10.1: Securities and Exchange Commission News Release on AMBIF Pilot Issue

The screenshot shows the official website of the Securities and Exchange Commission (SEC) of Thailand. The header includes the SEC logo, navigation links (About SEC, Contact Us, Career, e-Subscribe, Useful Links), a search bar, and a language selector (TH). Below the header is a menu with categories: Laws & Regulations, Market Development, Corporate Finance & Products, Intermediaries, Enforcement, and Towards International Excellence. The main content area is titled 'SEC News Release' with a breadcrumb trail 'From : Home > SEC News Release'. The news item is dated 'Friday 25 September 2015' and is labeled 'No. 105 / 2015'. The headline is 'Pilot issue of local currency bonds under AMBIF launched in Thailand'. The text of the release states that the SEC approved the Mizuho Bank, Ltd. offering of THB 3 billion baht-denominated bond, the first issue under the ASEAN +3 Multi-Currency Bond Issuance Framework (AMBIF) cooperation. It explains that AMBIF, an initiative of the ASEAN Bond Market Forum (ABMF), aims to boost product quantity and variety and the growth of the bond market in ASEAN +3 in response to demand from fundraisers and investors. Bond issuers will be able to raise funds through multi-jurisdictional offerings to non-retail investors with a standard filing form prepared in English language. A quote from Rapee Sucharitakul, SEC Secretary-General, highlights the milestone and the benefits of AMBIF for Thai capital market development and investor access. At the bottom, there are links for more details on the issuance and offering of local currency-denominated bonds under AMBIF.

SEC News Release
From : Home > SEC News Release

No. 105 / 2015 **Friday 25 September 2015**

Pilot issue of local currency bonds under AMBIF launched in Thailand

Bangkok, September 28, 2015 – The SEC approved the Mizuho Bank, Ltd. offering of THB 3 billion baht-denominated bond, the first issue under the ASEAN +3 Multi-Currency Bond Issuance Framework (AMBIF) cooperation.

AMBIF, an initiative of ASEAN Bond Market Forum (ABMF), aims to boost product quantity and variety and the growth of bond market in ASEAN +3 in response to demand of fundraisers and investors in the region. Bond issuers will be enabled to raise funds through multi-jurisdictional offerings to non-retail investors with a standard filing form prepared in English language.

Rapee Sucharitakul, SEC Secretary-General said, "With the Mizuho Bank, Ltd. pilot issuance of baht-denominated bonds in Thailand under AMBIF, bond market development in ASEAN +3 region has reached another milestone. This also reflects international recognition on solid foundation of Thai capital market. In addition, AMBIF initiative will help widen access to a variety of financial options for Thai businesses while staying cost competitive, whereas provide Thai investors with more choices of investment and better diversification."

For details on issuance and offering of local currency-denominated bonds under AMBIF, please visit
<https://asianbondsonline.adb.org/regional/abmf.php> and
https://asianbondsonline.adb.org/documents/abmf_ambif_implementation_guide_tha.pdf, respectively

The Securities and Exchange Commission, Thailand
 333/3 Vibhavadi-Rangsit Road, Chomphon, Chatuchak Bangkok 10900, Thailand
 Tel: +66 1207 or +66 2695 9999 Fax: +66 2695 9660 e-mail: info@sec.or.th
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AMBIF = ASEAN+3 Multi-Currency Bond Issuance Framework.

Source: Securities and Exchange Commission, Thailand. http://www.sec.or.th/en/Pages/News/Detail_News.aspx?tg=NEWS&lg=en&news_no=105&news_yy=2015

B. Future Direction

Thailand is participating in a number of regional initiatives that are expected to have a beneficial impact on the Thai bond market and the regional bond market at large.

1. ASEAN Capital Market Forum Facilitates Cross-Border Fundraising and Investments

The SEC jointly signed a memorandum of understanding with the Monetary Authority of Singapore, Singapore Exchange, and Securities Commission Malaysia to establish a Streamlined Review Framework (the Framework) for the ASEAN Common Prospectus. The Framework, which is an initiative under the ASEAN Capital Market Forum Implementation Plan endorsed by the ASEAN Finance Ministers, will facilitate cross-border offerings of equity securities and plain debt securities in ASEAN.⁴⁷

This initiative, which is aimed at publicly offered securities, is expected to stimulate cross-border investment in the debt securities of participating markets since investors will find the documentation and disclosure information increasingly familiar.

2. ASEAN+3 Multi-Currency Bond Issuance Framework

The introduction of AMBIF in the regional market in 2015 signaled an opportunity to expand bond and note issuance activities in the Thai market. Potential issuers have identified Thailand as a market of particular interest, largely due to the increased focus on decentralized funding for the support of domestic business operations by ASEAN+3 corporates.

Aimed at the issuance of PP-AI in Thailand, AMBIF encourages domestic and regional issuers to take advantage of streamlined issuance approval processes not only in Thailand, but also in other regional markets. For further details on AMBIF, please refer to Chapter IX.B.6.

The key advantage of AMBIF lies in the ability of regional issuers to tap multiple markets, including Thailand, using the same or similar approval processes. The additional issuance avenues across markets offer an alternative for corporates otherwise dependent on bank loans and other forms of financing.

3. Securities and Exchange Commission Reviews Note Issuance Program Concept

At this stage, the issuance of domestic bonds and notes in the form of an MTN program is not evident in the Thai market. However, Thailand has an MTN-like program in which the issuer who has updated publicly available information (e.g., a Thai listed company or a foreign company that has submitted updated information to the SEC) can refer to such information when submitting its application for the next issuance approval, instead of submitting the whole documentation.

⁴⁷ See <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2015/Facilitating-Cross-Border-Capital-Raising-in-ASEAN.aspx>

As part of its regulatory review, the SEC is presently in the process of evaluating the benefits of bond and note issuance via an MTN program similar to those practiced in the international bond market.

Issuance via an MTN program would allow issuers to tap the market on short notice and take advantage of beneficial market conditions. AMBIF promotes the note issuance program, or the MTN note program format, because it not only gives funding flexibility to issuers but also represents the most common format of bond and note issuance in the international bond market (for more details on AMBIF, see Chapter IX). This means that potential issuers, as well as investors and intermediaries, are likely to be familiar with such note issuance programs and related practices. At the same time, it is expected that potential issuers would benefit from reusing or adopting existing documentation or information on disclosure items.

Appendix 1

Group of Thirty Compliance

The Group of Thirty recommendations were originally conceived as the group's standards on securities settlement systems in 1989, detailing in a first-of-its-kind report nine recommendations for efficient and effective securities markets covering legal, structural, and settlement process areas. The recommendations were subsequently reviewed and updated in 2001 under the leadership of the Bank for International Settlements and through the efforts of a joint task force of the Committee on Payment and Settlement Systems and the technical committee of the International Organisation of Securities Commissions. Compliance with the Group of Thirty recommendations in individual markets is often an integral part in securities industry participants' and intermediaries' due diligence process.

Table A1: Group of Thirty Recommendations—Compliance for Thailand

	G-30 Compliance Recommendation	Implemented
1	Eliminate paper and automate communication, data capture, and enrichment	Yes
2	Harmonize messaging standards and communication protocols	Yes
3	Develop and implement reference data standards	Yes
4	Synchronize timing between different clearing and settlement systems and associated payment and foreign exchange systems	Yes
5	Automate and standardize institutional trade matching	Yes
6	Expand the use of central counterparties	Yes
7	Permit securities lending and borrowing to expedite settlement	Yes
8	Automate and standardize asset servicing processes, including corporate actions, tax relief arrangements, and restrictions on foreign ownership	Yes
9	Ensure the financial integrity of providers of clearing and settlement services	Yes
10	Reinforce the risk management practices of users of clearing and settlement service providers	Yes
11	Ensure final, simultaneous transfer and availability of assets	Yes
12	Ensure effective business continuity and disaster recovery planning	Yes
13	Address the possibility of failure of a systematically important institution	Yes
14	Strengthen assessment of the enforceability of contracts	Yes
15	Advance legal certainty over rights to securities, cash, or collateral	Yes
16	Recognize and support improved valuation methodologies and closeout netting arrangements	Yes
17	Ensure appointment of appropriately experienced and senior board members (of the boards of securities clearing and settlement infrastructure providers)	Yes
18	Promote fair access to securities clearing and settlement networks	Yes
19	Ensure equitable and effective attention to stakeholder interests	Yes
20	Encourage consistent regulation and oversight of securities clearing and settlement service providers	Yes

Source: Group of Thirty. 2003. *Global Clearing and Settlement—A Plan of Action*. <http://newsite.group30.org/publications/detail/123>

Appendix 2

Practical References

For easy access to further information about the market features described in the Thailand Bond Market Guide—including information on the policy bodies, regulatory authorities, and securities market-related institutions—interested parties are encouraged to utilize the following links (all websites available in English):

AMBIF Implementation Guideline for Thailand
<http://tinyurl.com/AMBIF-Impl-GL-for-THA>

AMBIF—Single Submission Form (as accepted by Thai regulatory authorities)
<http://tinyurl.com/AMBIF-Single-Submission-Form>

AsianBondsOnline (Asian Development Bank)
<https://asianbondsonline.adb.org/thailand.php>

Bank of Thailand
<http://www.bot.or.th/English/Pages/default.aspx>

Islamic Bank of Thailand
<http://www.ibank.co.th/2010/en/main/>

Ministry of Finance of Thailand
<http://www2.mof.go.th>

Public Debt Management Office of the Ministry of Finance of Thailand
<http://www.pdmo.go.th/en/>

Securities and Exchange Commission, Thailand
<http://www.sec.or.th/EN/Pages/Home.aspx>

Securities and Exchange Commission, Thailand—List of Licensees for Dealing In or Underwriting Debt Securities
<http://market.sec.or.th/public/orap/COMPANYPROFILE03.aspx?lang=en&licno=2&grptype=&lcstype=&>

Stock Exchange of Thailand
<http://www.set.or.th/en/index.html>
(This website is also available in Chinese and Japanese.)

Thai Bond Market Association
<http://www.thaibma.or.th/EN/Home.aspx>

Thailand Financial Instruments Information Center
<http://www.tfiic.org/en/home>

Thai Securities Depository
<http://www.set.or.th/tsd/en/tsd.html>

Appendix 3

Glossary of Technical Terms

Baht Bond	Term defined by the Ministry of Finance to describe a scheme under which foreign issuers may issue THB-denominated bonds or debt securities
Filing	Term for action of submitting documentation for a Private Placement for Accredited Investors to the Securities and Exchange Commission (SEC)
Financial Adviser	Financial intermediary servicing issuer during bond or note issuance process; the usage of this term is specific to the Thai market
Information memorandum	Synonymous with an offering memorandum; term typically used for key documentation for a private placement mainly to professional investors
Listing	Typically, action of submitting a bond or note issue to an exchange for the purpose of price finding, disclosure or profiling; in Thailand, often mistakenly used instead of “registration” with the Thai Bond Market Association (ThaiBMA)
Offering memorandum	Synonymous with an information memorandum; term typically used for key documentation for a private placement mainly to professional investors
Prospectus	Term generally used for the key disclosure document in public offers of securities; in Thailand, a Prospectus is used for all offers to any parties to subscribe to or purchase securities
Registration	Action of registering a bond issue with ThaiBMA; required under present regulations
<i>sukuk</i>	Islamic bond or note
Underwriter	Financial institution licensed by the SEC to buy bond or note issues from issuer and distribute (onward sell) to the target investors

Source: ABMF SF1.

ASEAN+3 Bond Market Guide 2016 Thailand

ASEAN+3 Bond Market Guide is a comprehensive explanation of the region's bond markets. It provides various information such as the history, legal and regulatory framework, specific characteristics of the market, trading and transaction including settlement systems, and other relevant information. Bond Market Guide 2016 for Thailand is an outcome of the strong support and kind contributions of ASEAN+3 Bond Market Forum members and experts, particularly from Thailand. The report should be recognized as a collective good to support bond market development among ASEAN+3 members.

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6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org