

# 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"> <li>Bank of Thailand Act B.E 2551, 2008</li> <li>Securities and Exchange Act B.E. 2535, 1992</li> <li>Public Debt Management Act B.E. 2548, 2005</li> </ul>
Subordinate legislation (regulations, notifications, orders, royal decrees, and rules)	<ul style="list-style-type: none"> <li>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</li> <li>Notification of the Securities and Exchange Commission No. KorChor. 9/2555, Re: Determination of Definitions of Institutional Investors and High Net Worth Investors, 2012</li> <li>Ministry of Finance Notification for the Public Debt Management Office</li> </ul>

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.<sup>5</sup> 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).<sup>6</sup>

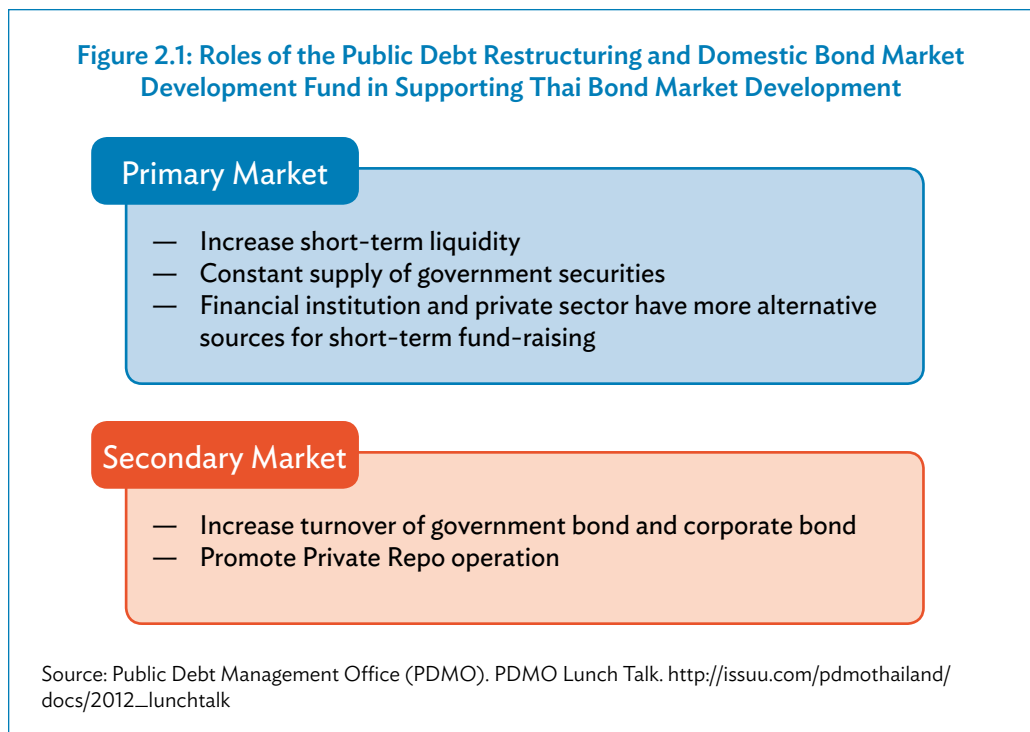
In addition to the above policy measures, the Bond Market Development Bureau also supervises the Public Debt Restructuring and Domestic Bond Market Development Fund (PDDF), which was set up in 2011. PDDF responsibilities include

<sup>5</sup> Description based on [http://www2.mof.go.th/government\\_agencies.htm](http://www2.mof.go.th/government_agencies.htm)

<sup>6</sup> Public Debt Management Office (PDMO). PDMO Lunch Talk. [http://issuu.com/pdmothailand/docs/2012\\_lunchtalk](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).



### 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:<sup>7</sup>

<sup>7</sup> 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.<sup>8</sup> 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.

<sup>8</sup> See <http://www.thaibma.or.th/EN/About/Background.aspx>; [http://www.sec.or.th/EN/RaisingFunds/EquityDebt/Pages/Laws\\_Regulations.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](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:<sup>9</sup>

- (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

<sup>9</sup> 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	
-	<a href="#">Approval of Securities Offering</a>
-	- <a href="#">General Provisions for Securities Offering</a>
-	- <a href="#">Shares Offering</a>
-	- <a href="#">Issuance and Offering of Equity by Foreign Issuer</a>
-	- <a href="#">Issuance and Offering of Equity Crowdfunding (crowdfunding)</a>
-	- <a href="#">Debentures Offering</a>
-	- <a href="#">Domestic Debenture</a>
-	- <a href="#">Plain Debt Securities</a>
-	- <a href="#">Structured Debentures</a>
-	- <a href="#">Structured Notes or Debentures imposing Obligations on Holders issued by Financial Institutions</a>
-	- <a href="#">Securitization</a>
-	- <a href="#">Basel III subordinated debt</a>
-	- <a href="#">Foreign Currency Debentures</a>
-	- <a href="#">Overseas Debenture</a>
-	- <a href="#">Foreign Issuer Debenture</a>
-	- <a href="#">SUKUK Offering</a>
-	- <a href="#">Real Estate Investment Trust</a>
-	- <a href="#">Private Equity Trust</a>
-	- <a href="#">Application for and Approval of offer for sale of units of Infra structure trust</a>
-	- <a href="#">Convertible Securities Offering</a>
-	- <a href="#">Convertible Debenture</a>
-	- <a href="#">Warrant</a>
-	- <a href="#">transferable subscription right</a>
-	- <a href="#">Derivatives Warrant</a>
-	- <a href="#">Others Securities Issuance</a>
-	- <a href="#">Others Securities Issuance</a>
-	- <a href="#">Exchange Traded Options</a>
-	- <a href="#">Beneficial on Underlying Securities</a>
-	- <a href="#">Depository Receipt</a>
-	- <a href="#">Others</a>
-	- <a href="#">Approval/Disclosure/After Sell Duties for ESOP</a>
-	- <a href="#">Approval/Disclosure/After Sell Duties for ESOP of Foreign Companies</a>
-	- <a href="#">Filing of the registration statement and the draft prospectus</a>
-	- <a href="#">Lodgment Registration Statement for debenture issuance pursuant</a>
-	- <a href="#">Registration Statement for SUKUK</a>
-	- <a href="#">Filing the registration statement</a>
-	- <a href="#">Filing the draft prospectus and distribution of the information before selling of securities</a>
-	- <a href="#">Governance of publicly traded company pursuant to chapter 3/1</a>
-	- <a href="#">Company exempt from chapter 3/1</a>
-	- <a href="#">Related parties transaction</a>
-	- <a href="#">Acquisition or dispose of asset</a>
-	- <a href="#">Report on the interest of director, executive and related person</a>
-	- <a href="#">COMPANY SECRETARY/DOCUMENT STORAGE</a>
-	- <a href="#">After Sell Duties</a>
-	- <a href="#">Securities Selling Report</a>
-	- <a href="#">Securities Settlement and Securities Registrar</a>
-	- <a href="#">Reports of securities holdings</a>
-	- <a href="#">Disclosure of financial position and business operation of the company</a>
-	- <a href="#">Report in accordance with section 57</a>
-	- <a href="#">Others</a>
-	- <a href="#">Subscription and Underwriting of securities</a>
-	- <a href="#">Fees</a>
-	- <a href="#">Others</a>

Source: Securities and Exchange Commission, Thailand. Securities Issuance. [http://capital.sec.or.th/webapp/nrs/nrs\\_search\\_en.php?ref\\_id=72&lang=en](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
<b>Resident issuer</b>				
Resident nonfinancial institution issuer	X			X
Resident financial institution issuer <sup>a, b</sup>	X	X <sup>b</sup>		X
Resident issuer of FCY bonds and notes	X	X		X
<b>Nonresident issuer</b>				
Nonresident nonfinancial institution issuer	X	X <sup>c</sup>	X	X
Nonresident financial institution issuer	X	X <sup>c</sup>	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.

<sup>a</sup> Resident financial institutions in Thailand include branches of foreign financial institutions that fall under the supervision of the BOT.

<sup>b</sup> Financial institutions also require approval from the BOT if a bond is issued for capital requirements.

<sup>c</sup> 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.

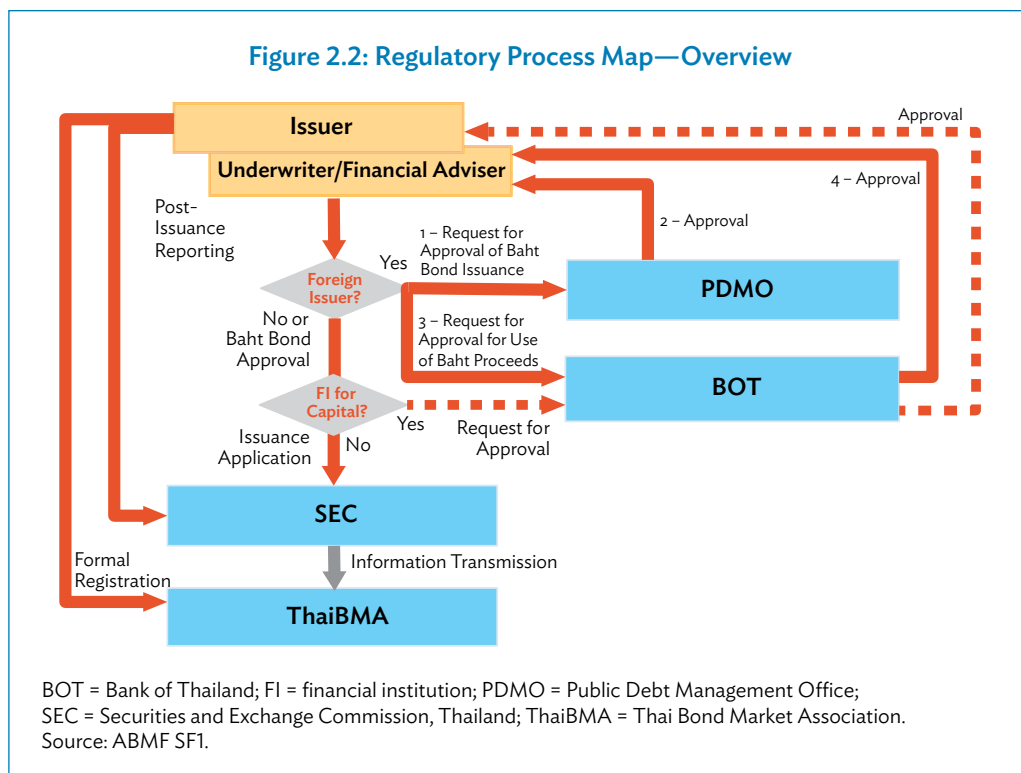
## 2. Regulatory Process Overview

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.<sup>10</sup> 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.

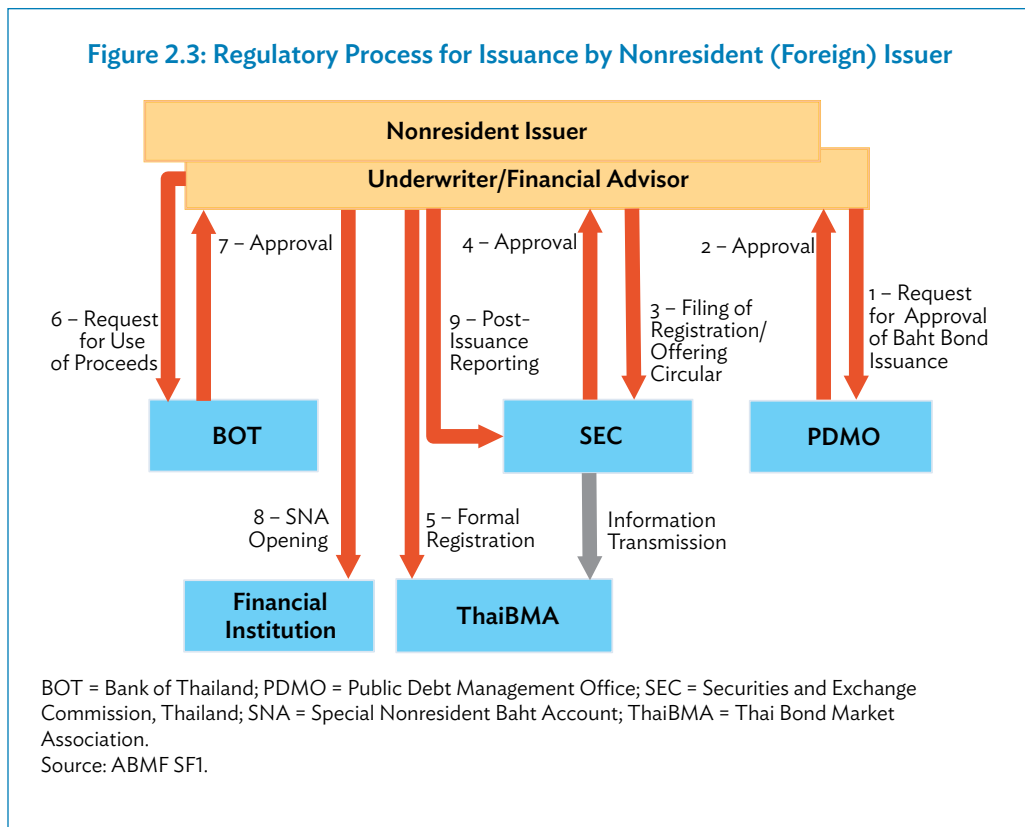
Following PDMO approval, the issuer may issue the authorized amount within a 9-month time frame, counted from the date of submission of the Baht Bond issuance application. If a foreign issuer is granted an approval but does not issue any bonds or notes in the authorized period, PDMO may penalize the 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.<sup>11</sup>

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

<sup>10</sup> 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.

<sup>11</sup> See [http://www.pdmo.go.th/upload/ebook\\_img/Baht\\_Denominated\\_Bond\\_%20in\\_Thailand\\_Version\\_2014.pdf](http://www.pdmo.go.th/upload/ebook_img/Baht_Denominated_Bond_%20in_Thailand_Version_2014.pdf)



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.”<sup>12</sup> 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.

<sup>12</sup> 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.<sup>13</sup>

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.

<sup>13</sup> 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.

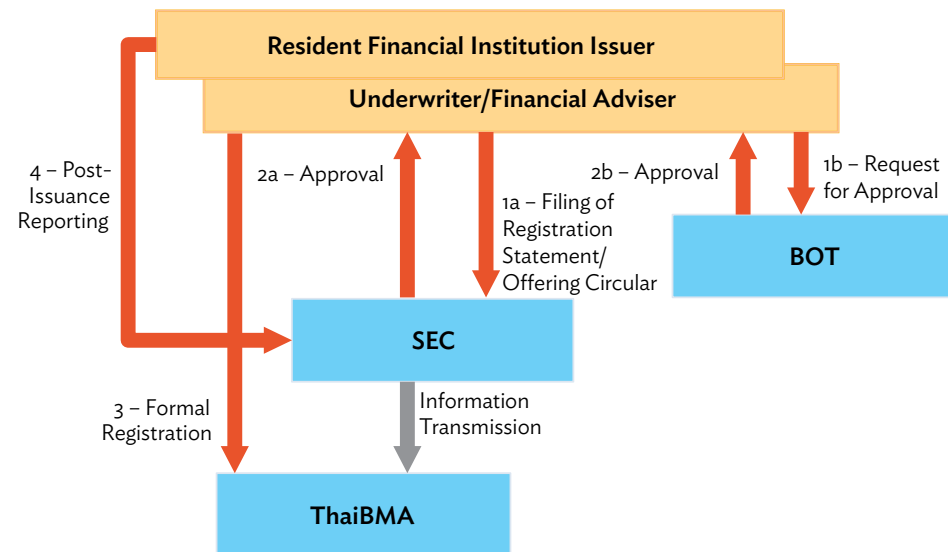
The introduction of the PP-AI regime by the SEC in July 2012 (see Chapter III.E for details) resulted in specific concessions for the issuance approval process, since PP-AI prescribes the issuance of bonds and notes to professional investors only, who are expected to be able to make their own informed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

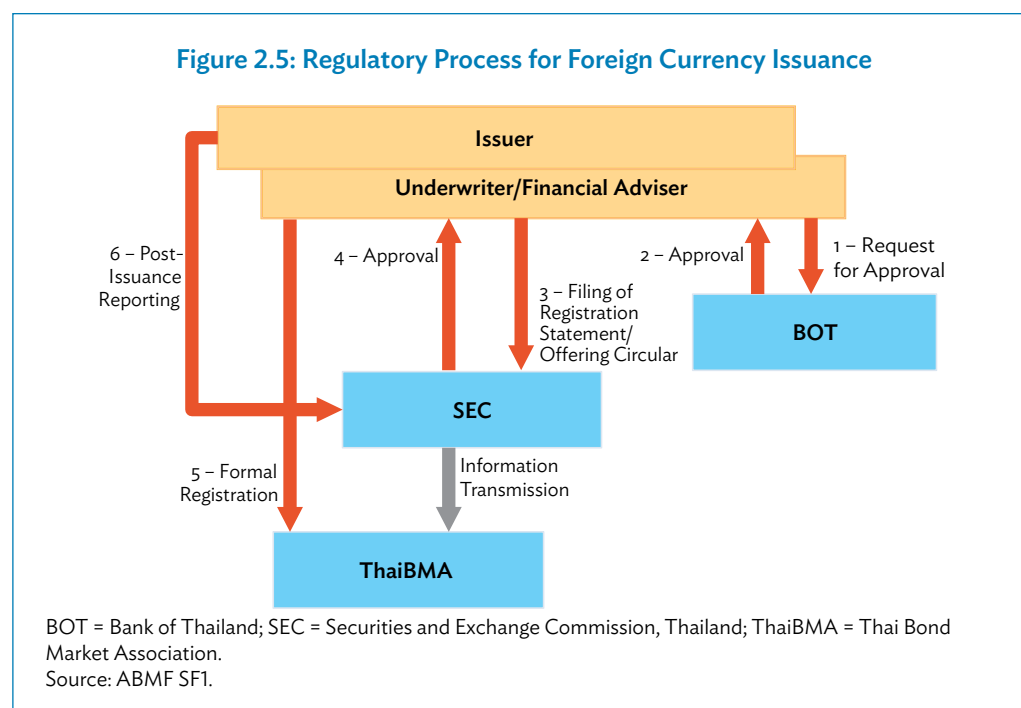
Once SEC and BOT approvals have been obtained, the resident financial institution has to follow the subsequent regulatory process as shown in steps 5 and 9 in section F.3.

## 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.



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.<sup>14</sup>

(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.

<sup>14</sup> 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.<sup>15</sup>

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

<sup>15</sup> 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.<sup>16</sup> 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.

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