



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>