

# Legal and Regulatory Framework

This chapter reviews the significant changes or updates to rules and regulations, regulatory processes, and other official prescriptions by regulatory authorities and market institutions in the bond market in Thailand since the publication of the *ASEAN+3 Bond Market Guide for Thailand* in 2016.

## C. Legislative Structure

Table 2.1 has been updated for regulations with a focus or impact on the bond market that have been introduced since the publication of the *ASEAN+3 Bond Market Guide for Thailand*. Many of these new regulations will be referenced or reviewed in detail in the relevant chapters and sections of this update note.

**Table 2.1: Examples of Securities Market Legislation or Regulations by Legislative Tier**

Legislative Tier	Content or Significant Examples
Constitution of Thailand	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> <li>Tax on Income from Debt Instruments Received by Mutual Funds (Amendment Act No. 52), effective 22 August 2019 <b>[NEW]</b></li> </ul>
Subordinate legislation (regulations, notifications, orders, and rules)	<ul style="list-style-type: none"> <li>Notification of the Capital Market Supervisory Board No. Tor Jor. 44/2556 Re: Rules, Conditions and Procedures for Disclosure regarding Financial and Non-Financial Information of Securities Issuers (Codified; effective 1 January 2014) <b>[NEW]</b></li> <li>Notification of the Capital Market Supervisory Board No. Tor Jor. 17/2561 Re: Application for and Approval of Offer for Sale of Newly Issued Debt Securities (Codified; effective 1 April 2018) <b>[NEW]</b></li> <li>Notification of the Capital Market Supervisory Board No. Tor Jor. 61/2561 Re: Offer for Sale of Debt Securities of Thai Government Agencies (Codified; effective 1 November 2018) <b>[NEW]</b></li> <li>Notification of the Capital Market Supervisory Board No. Tor Jor. 62/2561 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (Codified; effective 1 November 2018) <b>[NEW]</b></li> <li>Notification of the Capital Market Supervisory Board No. Tor Jor. 63/2561 Re: Approval Rules on Offer for Sale of Newly Issued Bond of Foreign Entity Denominated in Thai Baht (Codified; effective 1 November 2018) <b>[NEW]</b></li> </ul>

Legislative Tier	Content or Significant Examples
	<ul style="list-style-type: none"> <li>• Notification of the Office of the Securities and Exchange Commission No. Sor Jor. 1/2564 Re: Rules and Procedures for Preparation of Factsheet (effective 8 January 2021) <b>[NEW]</b></li> <li>• Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2564 Re: Application for and Approval of Offer for Sale of Newly Issued Sustainability-linked Bonds (Codified; effective 16 May 2021) <b>[NEW]</b></li> <li>• Guidelines on Issuance and Offer for Sale of Green Bond, Social Bond and Sustainability Bond <b>[NEW]</b></li> <li>• Guidelines on Issuance and Offer for Sale of Sustainability-Linked Bond <b>[NEW]</b></li> </ul>

B.E. = Buddhist Era, denotes a year in the Thai calendar.

Sources: SEC, ASEAN+3 Bond Market Forum Sub-Forum 1 team based on publicly available information.

## E. Securities Issuance Framework for Debt Securities

The SEC adjusted the issuance types for private placements in 2018, aimed at improving the investor protection for HNWs and offering greater flexibility for offers to institutional investors. The SEC also introduced the ability to issue debt securities via a program, a feature that subsequently also became available to nonresident issuers wishing to issue both local currency- and foreign currency-denominated bonds in the Thai market. The more significant changes are reviewed in section F in this chapter as well as in Chapter III.E.

At the time of writing, the SEC was in the process of applying a regulatory guillotine concept, reviewing in its entirety the regulatory framework for the capital market, including for the bond market in Thailand. Some of the envisaged or expected changes to the regulatory framework are indicated in Chapter X.B.1.

## F. Securities Issuance Regulatory Processes

Notification of the Capital Market Supervisory Board No. Tor Jor. 17/2561 Re: Application for and Approval of Offer for Sale of Newly Issued Debt Securities (Codified; effective 1 April 2018); Notification of the Capital Market Supervisory Board No. Tor Jor. 61/2561 Re: Offer for Sale of Debt Securities of Thai Government Agencies (Codified; effective 1 November 2018); Notification of the Capital Market Supervisory Board No. Tor Jor. 62/2561 Re: Offer for Sale of Bonds Denominated in Foreign Currency in the Kingdom of Thailand (Codified; effective 1 November 2018); and Notification of the Capital Market Supervisory Board No. Tor Jor. 63/2561 Re: Approval Rules on Offer for Sale of Newly Issued Bond of Foreign Entity Denominated in Thai Baht (Codified; effective 1 November 2018) contained adjustments to the issuance types under a private placement. This affected the regulatory processes as well as disclosure obligations by issuers at the time of issuance and during the life cycle of the bonds. In addition, the SEC used the revised regulations to fine tune provisions for public offers.

Other SEC regulations revised at the time affected the issuance methods and regulatory processes for the issuance of bonds by nonresidents issued in Thailand and denominated in both Thai baht and foreign currency.

Details are mentioned in the following sections. Due to the ongoing review of the regulatory framework by the SEC, which is expected to result in further changes in the next 12 months, only significant changes to previous prescriptions have been included.

A complete description of regulatory processes for all issuance methods will be contained in a next version of the *ASEAN+3 Bond Market Guide for Thailand*.

### 1. Regulatory Processes by Corporate Issuer Type

The SEC continues to apply the same regulatory processes for both nonfinancial institutions and financial institutions, other than with regard to the latter's capital requirements, within the same issuance method. However, the revisions in SEC regulations in 2018 further distinguished between the issuance methods; while public offers for sale require the full approval of the SEC and now come with additional qualifications for an issuer to be eligible, the approval for a private placement targeted at HNWs follows the registration of the transfer restrictions by an issuer, subject to the completion of the prescribed issuance documentation. Issuers may now also avail themselves of program issuance.

Significant differences are explained in the following sections.

### 3. Issuance Process for a Nonresident (Foreign) Issuer

The issuance process as such for bonds issued by a nonresident issuer is the same as for a Thai issuer. An issuer shall submit an application for approval to the SEC to be eligible for issuing bonds to HNWs.

However, the issuance of bonds via a dedicated program has also become available to nonresident issuers following the concept's introduction by the SEC in April 2018. Please see Chapter III.E for a detailed explanation of the issuance program concept.

### 4. Regulatory Process for Public Offers

Issuers wishing to issue bonds via a public offer for sale need to submit an application for approval to the SEC. In 2018, the SEC introduced specific criteria for an issuer of a public offer that it would consider when reviewing the application and giving approval (Table 2.2).

**Table 2.2: SEC Review and Approval Criteria for Public Offers**

Criteria	Thai Issuer	Foreign Issuer
i. The need to prepare financial statements in accordance with	Thai Financial Reporting Standards (TFRS) for Publicly Accountable Entities and audited by SEC-approved auditors	(a) TFRS (b) International Financial Reporting Standards (IFRS) (c) Financial Accounting Reporting Standards (d) United States Generally Accepted Accounting Principle (e) financial reporting standards recognized or specified by home regulator, or related laws and relevant rules of foreign country where its business has established, only if the foreign company has prepared and disclosed information in the financial statement with demonstrating effect

Criteria	Thai Issuer	Foreign Issuer
		of different item between such financial reporting standards and IFRS (reconciled IFRS) (f) other financial reporting standards recognized by the SEC Office.
ii. The issuer is not in the process of rectifying or having an ongoing obligation to comply with the Securities and Exchange Act B.E. 2535.	✓	✓
iii. Directors and executives will need to be listed on the database of directors and executives of securities issuing companies.	✓	N.A.
iv. Controlling persons shall not have any untrustworthy characteristics.	✓	N.A.
v. The issuer does not have a record of a material violation of the rules.	✓	✓
vi. The issuer has never violated against debt offering regulations for private placement.	✓	✓
vii. The issuer has no grounds to suspect that the disclosed material information is incomplete or inadequate or misleading.	✓	✓
viii. Directors, executives, and major shareholders may not be suspected of having interests in conflict with the best interests of the issuer's business or having benefits transferred from the business.	✓	✓
ix. The issuer may not be in default on principal or interest of any debt securities or in default on a loan payment.	✓	✓
x. The issuer may not be in breach of the terms and conditions of debt securities.	✓	✓
xi. The issuer does not have any record of the misuse of proceeds from debt offering.	✓	✓

B.E. = Buddhist Era (denotes a year in the Thai calendar); N.A. = not applicable; SEC = Securities and Exchange Commission, Thailand.  
 Source: SEC.

A fast-track approval process only takes 10 days to conduct due diligence and inform the issuer of any observation by the SEC in order to clarify such observation within the period specified in the notice of observation. The fast-track approval process is available for a listed company with an investment grade rating and without any issues in relation to good corporate governance. Otherwise, the observation period may take up to 30 days. In both cases, the SEC will notify the issuer of its consideration within 14 days after the clarification process has been completed.

The normal track regulatory process involves a 90-day observation period and 30 days for the consideration process.

The issuer will need to submit a registration statement and a (draft) prospectus and also produce a factsheet on the bonds to be issued, following the prescribed format for the factsheet amended by the SEC in 2021.

Issuers of a public offer may also utilize a program issuance for their offer (see Chapter III.E); in such cases, the issuer would have to file a supplementary form with the SEC if there were any significant changes prior to the issuance of each tranche. In addition, the issuer will have to submit a pricing form for each tranche, including the first issuance, for the registration statement to become and remain effective.

### **5. Regulatory Process for Private Placements (PP-II and PP-HNW)**

With the notifications mentioned in section F, the SEC distinguished and further clarified the issuance of debt securities through different types of private placement. The regulation became effective on 1 April 2018.

Instead of PP-AI, the SEC introduced private placements to institutional investors (PP-II) as well as private placements to high-net-worth investors (PP-HNW), both being subsections of AI.

Similarly to the previous PP-AI regime, the current PP-II are considered as a deemed approval, indicating the SEC's willingness to permit an issuer to initiate the issuance and offering process, provided the issuer complies with the respective prescriptions for an offering to institutional investors, such as the provision of terms and conditions and the submission of a registration statement compliant with the minimum requirements stated in the Securities and Exchange Act B.E. 2535, 1992 (SEC Act), as amended. The issuer of a PP-II will also have to formally register the transfer restrictions for the bonds with the SEC and indicate the same in issuance documentation and on bond certificates, if so applicable.

By contrast, offerings to HNWs are required to be approved by the SEC prior to commencing their issuance. The SEC intends to conduct a review of the application within 30 days from the date of complete submission; a fast track for applications on PP-HNW is not available. Additionally, such offerings impose additional disclosure requirements both before and after the debt securities are issued, including the use of clear and fair terms in the terms and conditions, and key financial ratios. The issuer of a PP-HNW will also have to formally register the transfer restrictions for the bonds with the SEC.

Clear and fair terms and conditions and key financial ratios are not required for offerings to institutional investors, as these institutions are deemed capable of understanding terminology and independently calculating and analyzing such financial ratios. Only bonds may be offered to HNWs under this regime, except where the issuers are commercial banks, finance companies, credit foncier companies, securities companies, or life insurance companies that can also offer short-term bills of exchange.

Appointing a bondholders' representative is required for PP-HNW offerings, but it is not required—or at least is not mandatory—for PP-II offerings. Similarly, an offering of complex products to HNWs must include a credit rating for the issue and, if applicable, a guarantor, whereas offerings to institutional investors are exempt from such requirements. Such information is not required, however, if the issuer intends to sell plain bonds, including floating-rate bonds—which are not structured bonds or have significantly different economic characteristics or risks—such as asset-backed

securities. At the same time, issuers offering bonds to institutional investors may include credit rating information in the disclosure document if the investors agree and/or to attract a specific investor universe—such as prudential investors, including pension funds and insurance companies—that will only invest in debt securities with credit ratings.

For easy reference, a comparison of the main characteristics between the original PP-AI scheme and the issuance types PP-II and PP-HNW is provided in Chapter III.E.

## **G. Continuous Disclosure Requirements in the Thai Bond Market**

Notification of the Capital Market Supervisory Board No. Tor Jor. 10/2556 Re: Submission of the Registration Statement for an Offer for Sale of Debt Securities (Codified; effective 1 November 2018) and Notification of the Capital Market Supervisory Board No. Tor Jor. 44/2556 Re: Rules, Conditions and Procedures for Disclosure Regarding Financial and Non-Financial Information of Securities Issuers (Codified; effective 1 January 2014), as amended, introduced a number of additional disclosure requirements for public offers for sale as well as for the new private placement types. Details are mentioned in the following sections.

### **1. Public Offers**

Following the promulgation of the abovementioned notifications, an issuer of a public offer for sale will need to update a number of indicators on the debt securities through their tenor; these include the use of proceeds as well as key financial ratios published in the prospectus at the time of issuance.

If the issuer chooses to issue a public offer via a program, the occurrence of a material event will have to be filed with the SEC (see also section 3 for details).

### **2. Private Placements**

Issuers having issued debt securities via PP-HNW are required to update the financial ratios in the issuance documentation on an annual basis; the issuer also has to report the use of proceeds and submit biannual financial statements to the SEC.

### **3. Issuance via a Program**

In cases when an issuer has opted to issue debt securities via a program, the 2018 regulations impose the need to notify the SEC during the tenor of the debt securities if any of a number of material events occurred.

In such an instance for a public offering, the issuer must promptly file Form 69-PO-SUPPLEMENT with the SEC and indicate if

- i. the issuer suffers significant damage;
- ii. the issuer discontinues all or a portion of its business operations;
- iii. the issuer modifies its objectives or nature of business;
- iv. the issuer enters into an agreement vesting other persons with management authority over the issuer in whole or in part;
- v. the issuer enters into a joint investment, is a party to a merger or acquisition, or takes over another issuer or is taken over in accordance with Section 247;
- vi. the issuer undergoes a business rehabilitation process;
- vii. an event in which the holders of debt securities shall raise the fact that the issuer is in event of default;
- viii. the issuer breaches the debt payment agreement (default);

- ix. the issuer materially changes its management structure or shareholding structure, or changes its directors, executives, or the person who has control over the issuer;
- x. the credit rating of debt securities has been downgraded;
- xi. the issuer's financial statements have a change in revenue or net profit more than 20% from the same period in the previous year;
- xii. the issuer increases or decreases its registered capital;
- xiii. the issuer changes its accounting policy;
- xiv. the issuer has a higher value of related party transactions than previously disclosed;
- xv. the issuer has significant investment plans;
- xvi. the issuer acquires or loses major commercial contracts;
- xvii. the issuer has a dispute that may cause the reduction of the shareholders' equity by more than 5%;
- xviii. the issuer increases the offering value of debt securities from those previously specified in the program by canceling or changing the resolutions of the Board of Directors or the resolutions of the shareholders' meeting that previously approved to issue debt securities under the program;
- xix. the issuer has changed the bondholders' representative and, if the bondholders' representative is a creditor, the issuer must disclose such relationship;
- xx. provide details on the offering of green bonds, social bonds, and sustainability bonds in Form 69-PO-BASE Part 3: Information about the debt securities project to be sold in Clause 2.1 (1) – (5);
- xxi. for the following items, add details or amend the information disclosed in Form 69-PO-BASE.
  1. In the case of a green bond, a social bond, or a sustainability bond, complete Form 69-PO-BASE Part 3 with information about the bond project to be sold, Clauses 2.1 (1) - (5);
  2. In the case of a sustainability-linked bond, complete Form 69-PO-BASE Part 3 with information about the bond project to be sold, Clause 2.2 (1), (4) and (5); (3) need only contain information about the issuer's obligations;
- xxii. the issuer has changed the external review provider for the offering of SLBs, as specified in Form 69-PO-BASE Part 3 information about the project debt securities to be sold, Section 2.2 (5) (in case the report has been submitted to the SEC Office, the information in the Form 69-PO-SUPPLEMENT shall be deemed to have been disclosed); or
- xxiii. the information on the issuer is materially different from the information disclosed in the first registration statement filed with the SEC and this has an impact on investor decision-making.

While the criteria for a notification to the SEC under the private placement scheme are principally the same as those for public offerings, criteria xiv. does not apply.

Under the private placement scheme, the issuer is not required to disclose the related party transactions (a waiver given by the accounting standard as a company does not offer securities to the public); the issuer is also not required to update the transactions.

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

In its role as the bond market self-regulatory organization, the ThaiBMA adjusted a number of its regulations in the last few years, as detailed below.

### *Registration*

The emergence of new debt instruments in the Thai market—including green, social, sustainability, and sustainability-linked bonds (SLBs)—prompted the ThaiBMA to issue Notification of the Thai Bond Market Association Board Re: Fee for Registration of Debt Instrument Information for Green, Social, Sustainability Bonds and Sustainability-Linked Bonds, which became effective on 27 March 2019.

To promote sustainable financing instruments, the notice waived the application fee and reduced the annual fee by THB10,000 per year. Unless rolled over, this incentive will be applied until June 2022.

### *Trading, Reporting, and Maintaining Trading Records*

On 13 February 2020, the ThaiBMA amended the Notification of the Board of the Thai Bond Market Association Re: Standard Practices for the Bond Market (No. 2). It amended the notice of maintaining trading records to require members to create and maintain a tape or electronic recording of each trading transaction for a period of at least 3 months, or an extended period as stipulated by the SEC, to be promptly recalled and inspected by the ThaiBMA if so requested.<sup>9</sup>

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

On 29 December 2020, the Stock Exchange of Thailand (SET) published the Regulation of the Stock Exchange of Thailand Re: Cancellation of the Regulations of the Stock Exchange of Thailand and Revision to the Content of the Regulations of the Stock Exchange of Thailand in Relation to Debt Instruments which are Listed or Permitted for Trading on the Stock Exchange B.E. 2563 (2020).

This comprehensive regulation contained the notice of cancellation of, or amendments to, a number of SET regulations covering the listing and trading of debt securities on the Thailand Bond Exchange (TBX), clearing and settlement provisions, as well as related disclosure and membership requirements. The regulation became effective on 29 December 2020 in anticipation of the planned discontinuation of listing and trading of debt securities on TBX effective 1 March 2021 (see also Chapter III.L).

Details of the affected SET regulations can be found on the SET website.<sup>10</sup>

## **K. Market Entry Requirements (Nonresidents)**

A new market entry requirement for nonresident investors is the Bond Investor Registration (BIR) with the BOT, which is explained as follows.

<sup>9</sup> The ThaiBMA rules are available from its website at <http://www.taibma.or.th/EN/Rule/RulesEN.aspx>.

<sup>10</sup> See <https://www.set.or.th/rulebook/#/regulation/content/31538>.

## 2. Foreign Investors

From 12 April 2021, foreign investors wishing to invest in Thai government or corporate bonds are required to undergo a BIR with the BOT; this includes existing investors in debt securities. The registration needs to be submitted at the UBO level and will be facilitated through the investor's custodian. To ease the necessary preparations by custodians and investors, the registration can be completed by 4 January 2022 at the latest.

Please also see section M.5 for details on the BIR.

## M. Regulations and Limitations (Nonresidents)

This section reviews applicable changes in the Measures to Prevent Thai Baht Speculation reported on in the *ASEAN+3 Bond Market Guide for Thailand* and also details the introduction of the BIR.

### 3. Measures to Prevent Thai Baht Speculation

The BOT is implementing measures to maintain stability of the Thai baht. These measures have been refined and relaxed across some of the types of Thai baht transactions. The measures with direct relevance for the investment in securities, including debt securities are summarized below:<sup>11</sup>

#### a. Measures to Limit Thai Baht Liquidity

Domestic financial institutions are limited to provide Thai baht liquidity to a nonresident in the case of transactions undertaken without an underlying trade or investment in Thailand. Effective from 5 January 2021, the total outstanding balance executed by each domestic financial institution shall not exceed THB200 million per group of nonresidents, a reduction from THB600 million as reported in the *ASEAN+3 Bond Market Guide for Thailand*.

#### b. Measures 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 domestic financial institution shall not exceed THB10 million per group of nonresidents. This measure remains unchanged from the *ASEAN+3 Bond Market Guide for Thailand*.

#### c. Measure on Nonresident Baht Accounts and Nonresident Baht Accounts for Securities

Effective from 22 July 2019, Nonresident Baht Accounts and Nonresident Baht Accounts for Securities are both limited to an end-of-day balance not exceeding THB200 million per nonresident for each type of account, a reduction from THB300 million as reported in the *ASEAN+3 Bond Market Guide for Thailand*.

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<sup>11</sup> See [Measures to Prevent Thai Baht Speculation \(bot.or.th\)](https://bot.or.th).

This limit includes balances of all accounts of the same type 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.

#### d. Measures on Non-Deliverable Forward

Domestic financial institutions are not allowed to undertake non-deliverable forward transactions against Thai baht with nonresidents. This measure remains unchanged from the *ASEAN+3 Bond Market Guide for Thailand*.

### 5. Implementation of Bond Investor Registration Scheme

On 12 April 2021, the BOT and the SEC launched the BIR, an electronic registration system for nonresidents investing in debt securities. The scheme requires that

- i. commercial banks providing custody services to arrange for their nonresident clients who invest in debt securities in Thailand must open Segregated Securities Accounts (SSA) at the UBO level and register for authentication with the BOT by 4 January 2022, and
- ii. the trading of debt securities must be settled through the SSA registered with the BOT only.

The BOT first advised the market of the upcoming BIR scheme in November 2020, as part of the publication of its plan to develop a new foreign exchange ecosystem for Thailand. The policy initiative contained four specific aspects, citing the BIR scheme as a measure under its intention to improve the monitoring and effectiveness of foreign exchange surveillance and management policy. The policy document is available from the BOT website.<sup>12</sup>

The primary objective of the BIR scheme was to obtain data at the UBO level and enhance data quality in terms of accuracy, coverage, and timeliness. The BIR will be implemented in two phases. The first phase started in April 2021 and applies to nonresidents, while the second phase applies to resident investors and will be announced in detail in late 2021. The BOT press release on BIR is available on its website.<sup>13</sup>

The SEC issued a corresponding regulation in November 2021 requiring SEC-regulated entities providing custodian, broking, dealing, and underwriting services to nonresident investors to arrange for their clients to register for authentication with the BOT under the BIR and to open an SSA account at the UBO level, similar to the BOT's requirements for custodian banks. In addition, the SEC will require debt securities broker-dealers to deal with nonresident clients who are already registered with the BOT. The regulation will become effective on 4 January 2022.

<sup>12</sup> See [https://www.bot.or.th/English/MonetaryPolicy/MonetPolicyComittee/MPR/BOX\\_MRP/BOX4MPR\\_BOTDevelopFX.pdf](https://www.bot.or.th/English/MonetaryPolicy/MonetPolicyComittee/MPR/BOX_MRP/BOX4MPR_BOTDevelopFX.pdf).

<sup>13</sup> See <https://www.bot.or.th/Thai/PressandSpeeches/Press/News2564/n2564e.pdf>.