

# AMBIF Bond and Note Issuance: Relevant Features in Thailand

In addition to the market features corresponding to the AMBIF Elements, a number of general Thai market features for bond and note issuance to professional investors (PP-AI issuances) will need to be considered, and are described in this chapter.

## Governing Law and Jurisdiction

Governing law and the jurisdiction for specific service provisions in relation to a bond or note issuance may have relevance in the context of AMBIF, since potential issuers may consider issuing under the laws or jurisdiction of a country or market other than the place of issuance. The choice of governing law or the contractual preferences of stakeholders can 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. However, it is necessary to point out that laws related to bond and note issuance and settlement must be governed by the laws and regulations of the place of issuance since AMBIF bonds and notes are domestic bonds and notes.

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 Ministry of Finance (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. 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.”<sup>5</sup>

There is no specific requirement of the description of an event of default, which will depend on the terms and conditions defined for the bond or note offering.

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.

<sup>5</sup> Ministry of Finance of Thailand. [http://www2.mof.go.th/webmanage/ps\\_releases/3/42-2006.pdf](http://www2.mof.go.th/webmanage/ps_releases/3/42-2006.pdf)

In the case of issuance of THB-denominated bonds and notes in Thailand, including when contracting parties choose a 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.

## Language of Documentation and Disclosure Items

It is envisaged that most of the ASEAN+3 markets participating in AMBIF will be able to accept the use of a common document in English; however, some markets may require the submission of approval-related information in their prescribed format and in the local language. In such cases, concessions from these regulatory authorities for a submission of required information in English, in addition to the local language and formats, may be sought.

Under Thai law, it is expected that a language other than Thai would be accepted for the purpose of contractual documents and official submissions. At this stage, foreign issuers are allowed to use official submissions or the filing of applications and disclosure items in English. To offer this feature (English version) to Thai issuers offering bonds and notes to PP-AI in multiple jurisdictions, the SEC is aiming to revise related regulations in 2015.

## Credit Rating

Under SEC regulations, a credit rating for PP-AI issuances is not mandatory. However, in cases of a foreign issuer offering THB-denominated debt securities under the Baht Bond concept to Accredited Investors, PDMO requires a credit rating in every case, except when the bonds or notes are issued by a government or with a government guarantee.

However, market participants may still prefer to have a credit rating in place since many market participants designated as professional investors may not be able to replicate in-house the credit assessment process undertaken by the credit rating agencies.

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

According to the Notification of the Office of the Securities and Exchange Commission No. SorChor. 7/2555 Re: Credit Rating Agencies Approved to Issue Credit Rating for Instruments Subject to Rules Concerning Issuance and Offer for Sale and Investment of Funds, SEC-approved credit rating agencies include

1. those established under Thai law with approval from the SEC; and
2. the following credit rating agencies established under foreign law:
  - a. Standard & Poor's;
  - b. Moody's;
  - c. Fitch Ratings; and
  - d. Rating and Investment Information, Inc.

No regional credit rating agencies, other than those mentioned above, have been approved by the SEC. Rating and Investment Information, Inc. is not accepted by PDMO.

## Selling and Transfer Restrictions

Selling and transfer restrictions for the issuance of bonds and notes to professional investors are well defined for PP-AI issuance in the Thai market.

Pursuant to the 2012 Notification of the Securities and Exchange Commission No. KorChor. 9/2555 Re: Determination of Definitions of Institutional Investors and High Net Worth Investors, any issuance to professional investors using the concessions for PP-AI issuance on disclosure and regulatory processes must indicate that a bond or note issuance is a PP-AI issuance (including foreign institutional investors) in all offer documents, including the term sheet of a proposed bond or note issue, and related correspondence.

## Note Issuance Programs

AMBIF promotes the use of note issuance programs, such as the medium-term note (MTN) format, because they not only give funding flexibility to issuers but also represent the most common format of bond and note issuance in the international bond market. This means that potential issuers, as well as investors and intermediaries, are likely to be familiar with note issuance programs and related practices. Hence, this would make AMBIF comparable to the relevant practices in the international bond market. At the same time, it is expected that potential issuers may benefit from reusing or adopting existing documentation or information on disclosure items.

At this stage, the issuance of domestic bonds and notes to professional investors via an MTN program is not evident in the Thai market. However, Thailand has an MTN-like program in which the issuer who has updated publicly available information (e.g., a Thai listed company or a foreign company that has submitted updated information to the SEC) can refer to such information in the offering circular, instead of submitting the whole document. In addition, the cooling-off period for the issuance under PP-AI is only 1 business day.

However, PDMO cannot grant a blanket approval to a foreign issuer for the maximum issuance amount in any given period under this MTN-like note issuance program, due to the limited quota available. Therefore, approval will be given on an issuance-by-issuance basis.

The SEC is in the process of evaluating the benefits of bond and note issuance via an MTN-like program similar to international markets.

## Bondholder Representative

SEC regulations require the appointment of a bondholder representative only if a bond or note is offered through a public offer. This is not mandatory for PP-AI issuances. However, PDMO requires the appointment of a bondholder representative for bonds and notes issued by a foreign issuer under the Baht Bond program in every case.

The SEC does not require the issuer to appoint a bondholder representative when a bond or note issued in another jurisdiction is offered for sale in the PP-AI market.

According to the SEC Act, the issuer shall appoint the bond or debenture holder representative in Thailand during the tenure of the bond for the benefits to the holders. 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.

Bondholder representatives typically are banks or financial institutions, and have specific fiduciary and fiscal responsibilities under Thai law.