



AMBIF Bond and Note Issuance Process in Thailand

This chapter describes the regulatory processes and necessary steps for the issuance of bonds and notes to Accredited Investors in the Thai market.

Overview of Regulatory Processes

Regulatory Processes by Corporate Issuer Type

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

In order to make the issuance processes by issuer type more comparable across ASEAN+3 markets, Table 2 features common issuer type distinctions that are evident in regional markets. Not all markets will distinguish all such issuer types. Sovereign issuers may be subject to different regulatory processes.

Regulatory Process Map: Overview

The regulatory process map shown in Figure 1 may help with the navigation of the applicable regulatory processes in Thailand for proposed bond or note issuance. Individual processes are explained in detail below.

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

In addition to appointing an underwriter, an issuer may appoint another person to help in preparing and submitting the offering circular to the SEC; this party is called a Financial Adviser.⁶ However, in practice, most underwriters also hold a Financial Adviser license; in such cases, the underwriter and the Financial Adviser will be the same party.

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

⁶ 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 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, it must be licensed by the SEC.

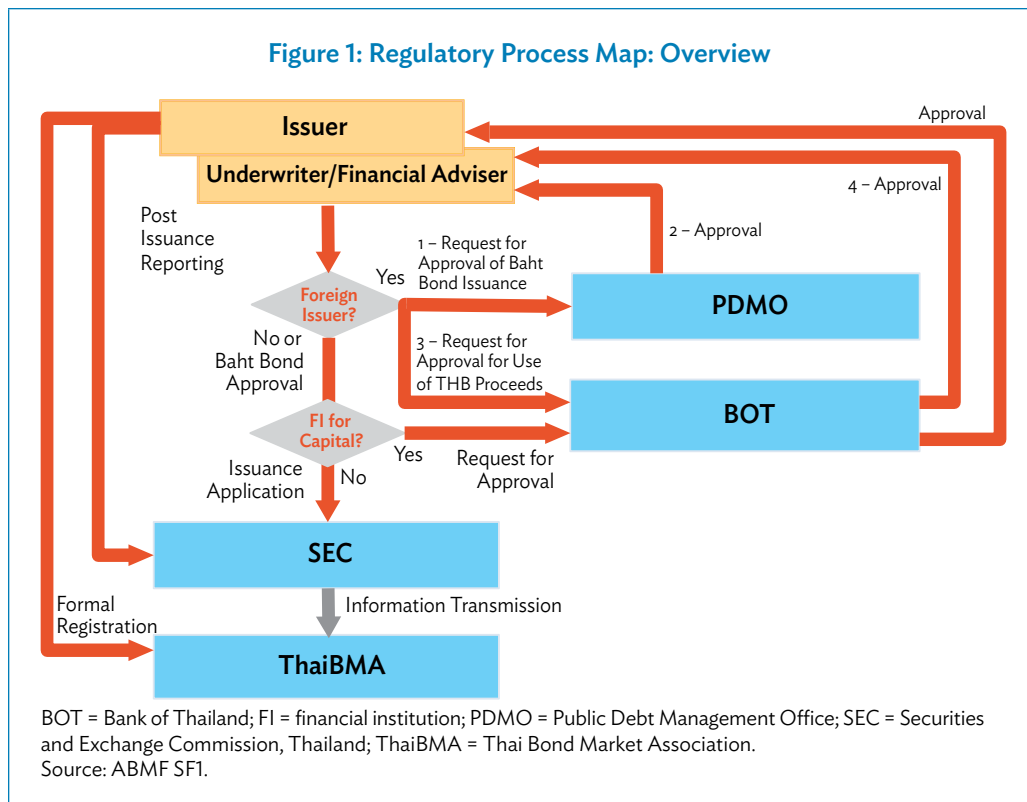
Table 2: Regulatory Processes by Corporate Issuer Type

Type of Corporate Issuer	SEC	BOT	PDMO	ThaiBMA
Resident issuer				
Resident nonfinancial institution issuer	X			X
Resident financial institution issuer ^{1,2}	X	X		X
Resident issuer issuing FCY-denominated bonds and notes	X	X		X
Nonresident issuer				
Nonresident nonfinancial institution issuer	X	X ³	X	X
Nonresident financial institution issuer	X	X ³	X	X
Nonresident issuer issuing FCY-denominated bonds and notes	X	X		X

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

- ¹ Financial institutions only require approval from the BOT if a bond is issued for capital requirements.
- ² Resident financial institutions in Thailand include branches of foreign financial institutions that fall under the supervision of the BOT.
- ³ The BOT does not approve issuance as such, but instead the use of THB-denominated issuance proceeds from a Special Nonresident Baht Account.

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



Issuance Processes in Local Currency

This section describes the issuance processes for private placement bonds and notes aimed at Accredited Investors (PP-AI issuances) in Thai baht, the dominant issuance currency in the Thai market.

Distinctions are made according to specific issuance processes for particular corporate issuer types, as may be practical. In some cases, bonds and notes issued by a foreign government or a government-linked agency also require SEC approval and may be subject to additional approvals that are not detailed in the AMBIF Implementation Guidelines for Thailand.

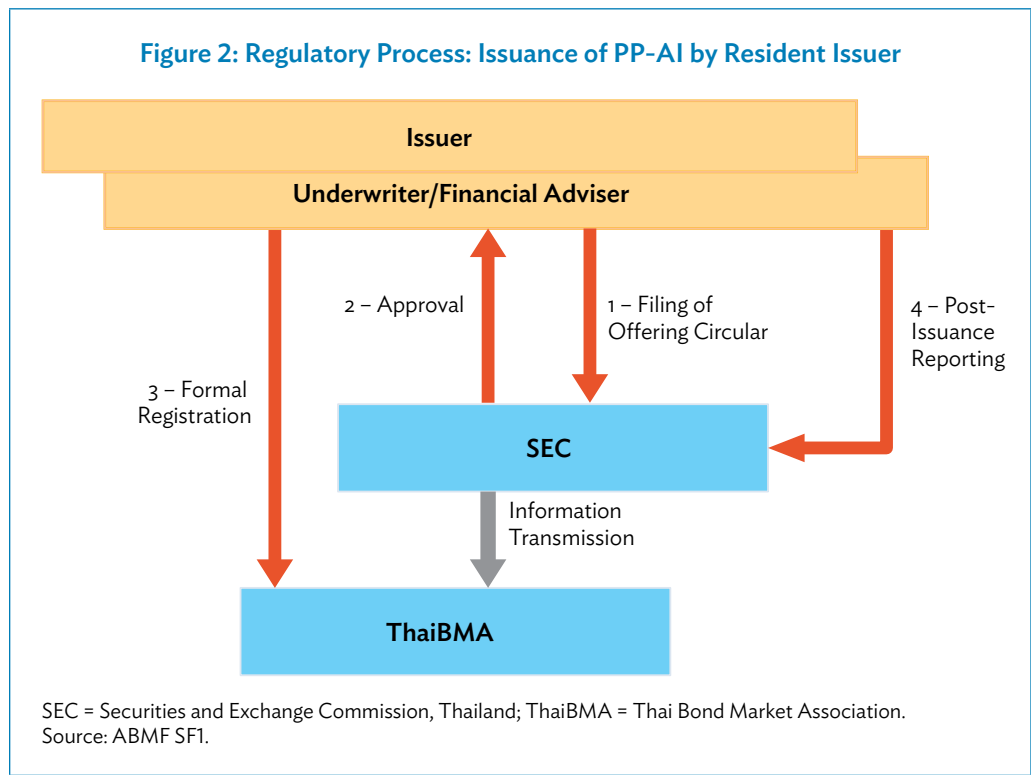
Issuance Process for Resident Issuer

A resident issuer is defined as a corporate legal entity under Thai law; this includes the branches of foreign financial institutions under the banking services supervision of the BOT or other corporate issuers falling under Thai regulatory governance.

The regulatory process map shown in Figure 2 may help with the navigation of the applicable regulatory processes in Thailand for issuance of PP-AI by a resident issuer. The following steps need to be observed when a resident corporate issuer wants to issue under PP-AI in Thailand.

Step 1: Filing of (Draft) Offering Circular with the SEC

All applications for the issuance of bonds and notes, including proposed issuance to professional investors under PP-AI, need to be filed with the SEC. For PP-AI issuance, the issuer or underwriter only need to file a draft offering circular. Requirements for the filing of a



draft offering circular are laid out in the SEC Act. Sections 69 and 70 stipulate the minimum disclosure requirements for issuers, without prescribing a particular format for submission. This allows issuers or their agents to utilize typical documentation for issuance of bonds and notes to professional investors, such as an information memorandum or an offering circular, as long as all required information is contained therein. In the Thai market, a short prospectus refers to typical documentation in order to distinguish documentation specific to PP-AI issuances from public offers. A short prospectus is equivalent to an information memorandum or an offering circular in style and content.

The offering circular itself, known as Form 69-DEBT-II&HNW, was introduced in the Notification of the Capital Market Supervisory Board No. TorChor. 10/2556 Re: Submission of an Offering Circular for Offer for Sale of Debt Securities dated 11 March 2013, and replaces the previous format known as Form 69-S.

According to Section 69 of the SEC Act, an offering circular (for PP-AI) must contain the following details:

1. objective of the offer for sale of the securities to the public or any person;
2. name of the issuing company that issues securities;
3. capital of the company;
4. amount and type of the securities offered for sale;
5. expected selling price per unit of securities;
6. nature of the business;
7. financial condition, business operations, and material information of the business;
8. management and major shareholders of the issuing company;
9. auditor regularly contacted financial institutions, and legal advisor of the issuing company;
10. procedures for the subscription, underwriting, and allocation of securities; and
11. other information as specified in the notification of the Capital Market Supervisory Board.

In addition, Section 70 of the SEC Act prescribes that the offering circular for the sale of bonds and notes under PP-AI shall also contain the following information:

1. rights and restrictions related to the transfer of bills or debentures;
2. return on debentures and bills;
3. property or other collateral used as security of repayment, if any;
4. debenture holder representative, if any;
5. encumbrances on property of the company that issues securities in the case of unsecured securities;
6. outstanding debt from previous issues of bills or debentures;
7. procedure, time, and place of repayment;
8. procedures for conversion of rights, if any; and
9. other information as specified in the notification of Capital Market Supervisory Board.

To avoid the resale of PP-AI debt securities to other types of investors, the SEC requires the issuer to register the transfer restrictions to ensure that the sale and resale of these debt securities will only occur among Accredited Investors.

From 1 July 2015, the filing of an offering circular with the SEC should be done online through the Initial Product Offering System (IPOS), which will initially be available only in Thai, with an English version available at a later stage.

At present, the SEC does not approve note issuance through an MTN program. As mentioned earlier, Thailand has an MTN-like program for THB-denominated bond and note issuance.

The SEC charges a fee, which is payable on the submission date, for the filing of an offering circular.

The SEC has confirmed that the SSF may be used for this filing since the SSF was reviewed by the SEC and contains all relevant information required of an offering circular and the provisions of Sections 69 and 70 of the SEC Act, as detailed above.

Step 2: Approval of Offering Circular by the SEC

The SEC reviews the (draft) offering circular, and may provide feedback as necessary. The SEC may instruct the promoters of a public limited company, a company, or owner of securities to attach any documents other than those specified in the offering circular.

The issuer or underwriter may revise or, possibly, resubmit the offering circular, as may be necessary. When this is the case, a cooling-off period of 1 day will have to be observed.

The offering circular becomes effective upon expiry of the cooling-off period after submission of completed documents and if no further amendments to the offering circular are submitted. The SEC will issue a formal letter to inform the issuer that the offering circular becomes effective. After the effective date, the issuer may proceed with offers of sale to investors.

The issuance approval by the SEC does not carry an expiry date. However, if an issuer has not issued bonds and notes under an approval within a certain period of time (e.g., 6 months from approval date) the issuer is required to update information in the offering circular with the SEC.

Once the SEC approves the offering circular, the bond and note information required for the registration with ThaiBMA will be transmitted automatically from IPOS to ThaiBMA's Bond Registration Information System. The issuer or its agent may also print this information from IPOS for use in the formal registration (Step 3).

Step 3: Registration with ThaiBMA

The registration of a bond or note issue with ThaiBMA is required by SEC regulations as a condition for the offering of bonds and notes in the primary market in Thailand.

Starting from 1 July 2015, however, the ThaiBMA registration process has been integrated with the SEC approval process. When bond and note issuers submit their filing to the SEC through IPOS (Step 1) and the issuance is subsequently approved by the SEC (Step 2), the bond and note information will be electronically submitted to the ThaiBMA registration database. The issuer can then print the official registration form already containing all required information from IPOS and submit it to ThaiBMA as the formal registration request.

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

Upon ThaiBMA registering the bond and note information (completion of the registration process), the information is available on the ThaiBMA website for general viewing.

Step 4: Post-Issuance Reporting to the SEC

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

Issuance Process for Resident Nonfinancial Institution Issuer

In Thailand, the issuance process for resident issuers that are nonfinancial institutions is the same as described above.

Issuance Process for Resident Financial Institution Issuer

In Thailand, the issuance process for resident financial institutions is the same as described above. The regulatory process map shown in Figure 3 may help with the navigation of the applicable regulatory processes in Thailand for issuance of PP-AI by a resident financial institution.

However, in such cases where a bond or note issuance by a resident financial institution is intended to support capital requirements, a resident financial institution might file an application for issuance approval from the BOT in parallel with an application for issuance approval from the SEC. The additional process is described in this section.

The following steps need to be observed when a resident financial institution wants to issue under PP-AI in Thailand and use the proceeds to support capital requirements.

Step 1a: Filing of (Draft) Offering Circular with the SEC

Please refer to Issuance Process for Resident Issuer, Step 1.

Step 1b: Request for Approval from the BOT

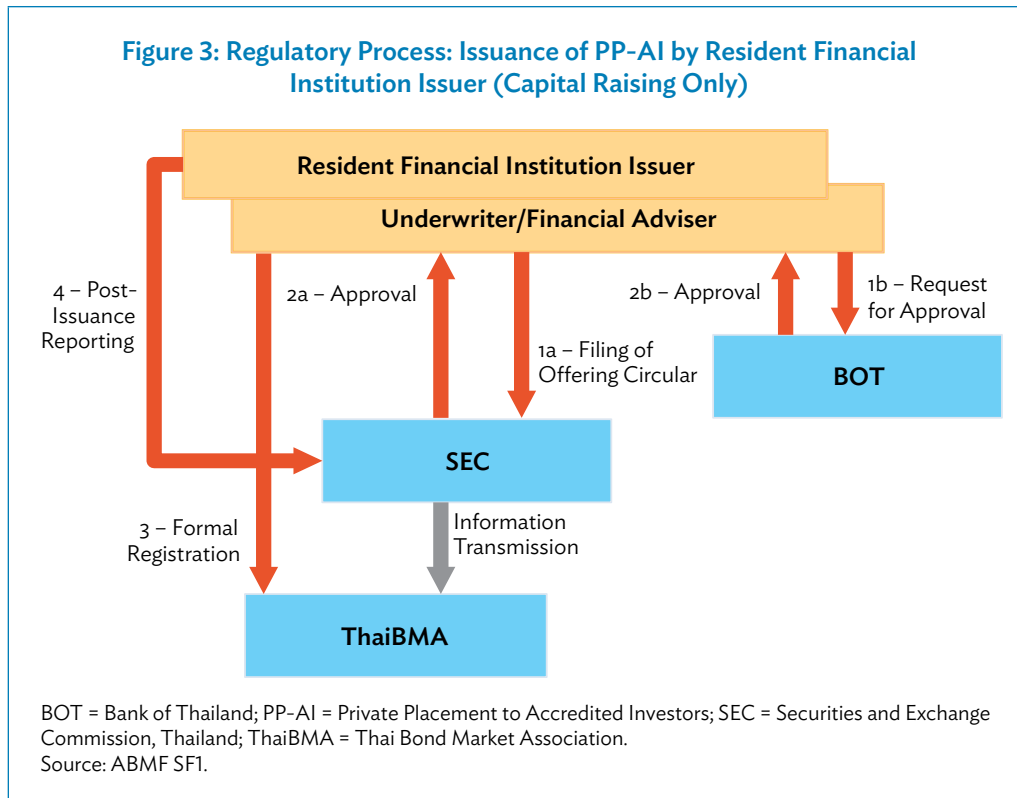
The issuer will need to file a request for approval with the BOT's Financial Institution Applications Department. All capital instruments must meet the criteria as prescribed in the BOT's regulations on capital requirements, which comprise two main features: (i) no incentives to redeem and (ii) loss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

Step 2a: Approval of Offering Circular by the SEC

Please refer to Issuance Process for Resident Issuer, Step 2.

Step 2b: Approval from the BOT

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



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

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

Step 3 Onward: Formal Registration and Post-Issuance Reporting

Once SEC and BOT approvals have been obtained, the resident financial institution has to follow the remaining regulatory process steps outlined above. The regulatory process map shown in Figure 4 may help with the navigation of the applicable regulatory processes in Thailand for issuance under PP-AI by a nonresident (foreign) entity.

Issuance Process for Nonresident (Foreign) Issuer

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

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

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

The objective of the Baht Bond process is to control the maximum amount of THB-denominated bond or note issuances by nonresidents, who often swap the proceeds into a foreign currency. In line with this objective, the SSF (IV: Information on the Notes, 2. Other Information of the Notes, item 16) requires describing the name of the cross-currency swap intermediaries in the case of THB-denominated bonds and notes issued by non-Thai residents.

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

Following PDMO approval, the issuer may issue the authorized amount within a 9-month time frame, counted from the date of submission of the Baht Bond issuance application. If a foreign issuer is granted an approval but does not issue any bonds or notes in the authorized period, PDMO may penalize the issuer. As such, the SSF (IV: Information on the Notes, 2. Other Information of the Notes, item 17) requires describing the timing of a bond issuance within the period authorized by PDMO in the case of THB-denominated bonds and notes issued by non-Thai residents.

PDMO's regulatory process for Baht Bonds is described in more detail in an official document available on the website of the MOF: http://www.pdmo.go.th/upload/ebook_img/Baht_Denominated_Bond_%20in_Thailand_Version_2014.pdf

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

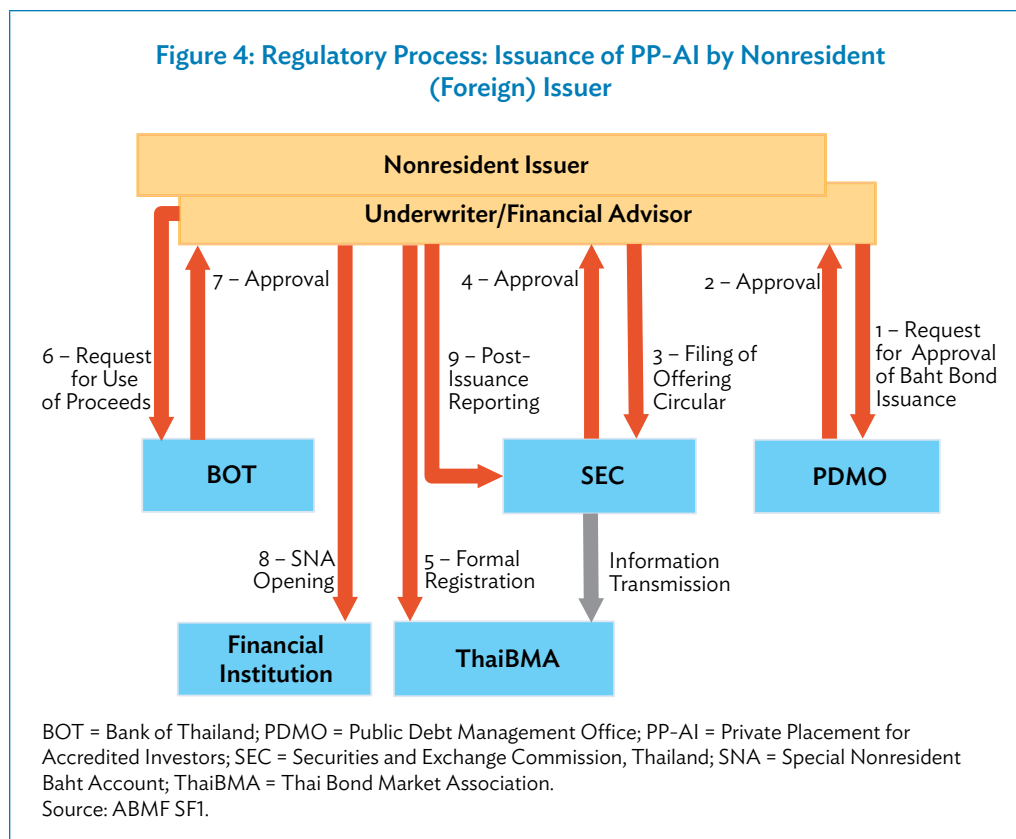
Under current SEC regulations, a nonresident (foreign) issuer needs to appoint a contact person in Thailand. The purpose of the contact person is to field questions or requests directed at the issuer, and to disseminate information provided by the issuer to bondholders in Thailand.

The SEC Act states that “[the issuer] shall appoint a representative in Thailand to act as a person during the tenure of the bond or note in order to receive letters, orders, notices, and documents, or to contact the relevant authorities.”⁷ Contact persons do not have fiduciary or fiscal responsibilities under the law.

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

The following steps need to be observed by a nonresident (foreign) issuer when applying for a THB-denominated bond issuance (PP-AI) under the Baht Bond process.

⁷ Securities and Exchange Commission, Thailand. <http://www.sec.or.th/EN/SECInfo/LawsRegulation/Documents/actandroyal/1Securities.pdf>



Step 1: Letter of Application of Baht Bond Issuance to PDMO

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

1. objective of fundraising,
2. type of bond,
3. maturity,
4. issue size,
5. offering method (private placement),
6. timing of issuance,
7. use of proceeds,
8. cross-currency swap intermediaries, if applicable,
9. credit rating requirement(s), and
10. collateral guarantee, if applicable.

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

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

Step 2: Approval from PDMO

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

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

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

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

Steps 3 and 4: Filing of (Draft) Offering Circular with the SEC and Approval

Once PDMO approval is obtained, the nonresident (foreign) issuer would have to follow the PP-AI issuance approval process prescribed by the SEC. For more details, please refer to the regulatory process described above.

Step 5: Formal Registration with ThaiBMA

Once PDMO and SEC approvals have been obtained, the nonresident issuer or its agent has to formally register the bond or note with ThaiBMA, as outlined above.

Steps 6 and 7: Request for Use of Thai Baht Proceeds from BOT and Approval

Approval from PDMO is a prerequisite (Step 2).

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

Step 8: Opening of an SNA with a Financial Institution

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

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

Issue proceeds may only be withdrawn for specific purposes, including defined investment or swap transactions. Reporting on the SNA to the BOT is to be provided by the domestic financial institution under separate regulations.

Step 9: Issuance Reporting to the SEC

As per the PP-AI issuance approval process described above, the nonresident issuer, or its agent, will need to submit a report to the SEC upon completion of the bond or note offering to Accredited Investors.

Issuance Process for Nonresident (Foreign) Nonfinancial Institution Issuer

In Thailand, the issuance process for all nonresident issuers is the same. Hence, the issuance process for a nonresident nonfinancial institution follows the process as outlined in Issuance Process for Nonresident (Foreign) Issuer.

Issuance Process for Nonresident (Foreign) Financial Institution Issuer

In Thailand, the issuance process for all nonresident issuers is the same. Hence, the issuance process for a nonresident financial institution follows the process as outlined in Issuance Process for Nonresident (Foreign) Issuer.

Issuance Process for FCY-Denominated Bonds and Notes

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

This section describes the process for PP-AI issuances in foreign currencies as a matter of reference only.

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

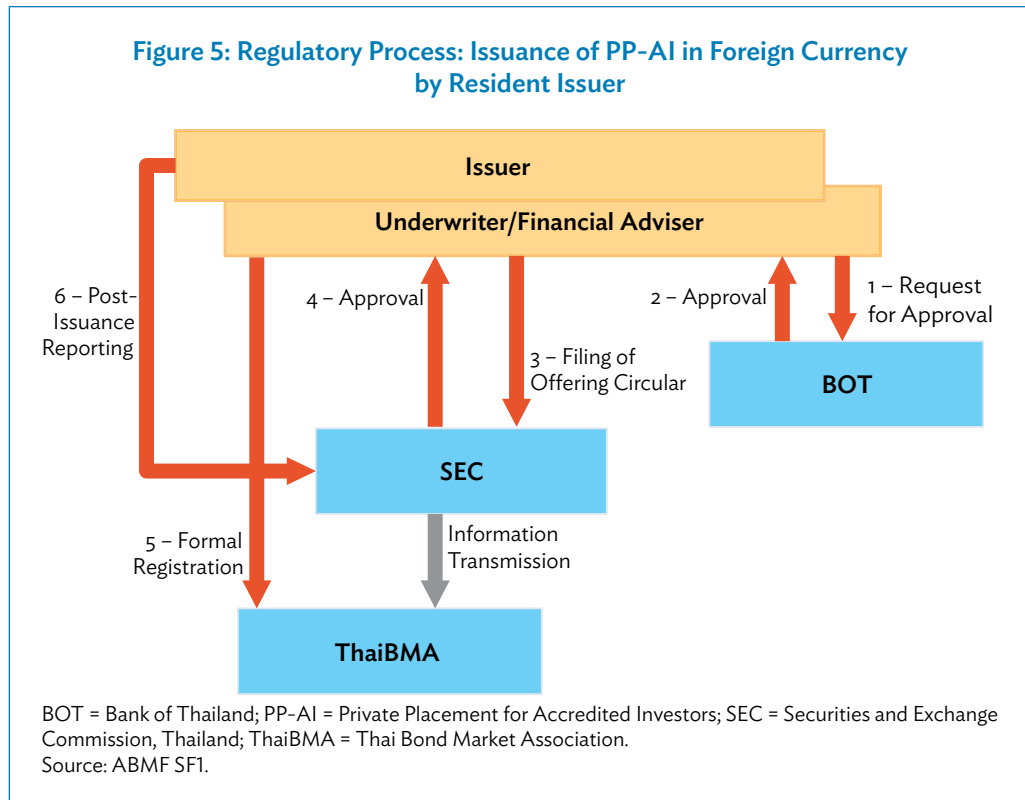
Issuance Process for Resident Issuer of FCY Bonds and Notes

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

The regulatory process map shown in Figure 5 may help with the navigation of the applicable regulatory processes in Thailand for issuance of PP-AI in foreign currency by a resident issuer. The following steps will need to be observed when a resident issuer wants to issue PP-AI in Thailand in a foreign currency.

Step 1: Request for Approval from the BOT

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



The application needs to contain detailed information on intended remittances of FCY proceeds or cross-currency swaps relating to the proceeds.

Step 2: Approval from the BOT

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

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

There is no fee charged for this BOT approval process.

Step 3 Onward: Filing of (Draft) Offering Circular with the SEC

Once the BOT approval is obtained, the resident issuer would have to follow the issuance approval process prescribed by the SEC. For more detail, please refer to the regulatory process described above.

Issuance Process for Nonresident (Foreign) Issuer of FCY Bonds and Notes

The issuance process for nonresident issuers is the same as described above.