

Baht Bond Issue by Foreign Issuer

THE REGULATORY PROCESS FOR THB BOND OFFERINGS IN THAILAND BY FOREIGN ISSUERS

This briefing note provides a short overview of the regulatory requirements imposed by the Office of the Securities and Exchange of Thailand (the "SEC") for THB bond/debenture offerings in Thailand (the "Offering") by foreign issuers or any special purpose vehicle established by a foreign government organisation/entity or by any foreign entity, for the purpose of securitisation in Thailand (collectively, the "Issuer"). It is not intended to be comprehensive and should not be used as a substitute for taking legal advice in the context of a particular transaction.

Approval

The Offering must be approved by the Ministry of Finance of Thailand (the "MoF").

Application Periods

The MoF allowed foreign entities to apply for its approval for the issue of THB Bonds **3 times** a year, i.e. applications can now be made in **March, July and November** of each year. The approval will be valid for **9 months** from the approval date (i.e. the issuer is allowed to issue its THB Bonds within 9 months from the grant of approval). In addition, the MoF also imposes the following conditions on any subsequent submission by the issuer of the application referred to above:

- If the issuer has already issued its THB Bonds to the fullest amount approved by the MoF prior to the beginning of the next application period, such issuer is permitted to submit a new application for its new THB Bond issue in the next application period.

For example, if the issuer submitted an application in November 11 and fully issued its THB Bonds as approved by the MoF by March 12, such issuer can submit a new application in March 12.

- If the issuer has issued its THB Bonds in an amount less than that approved by the MoF, such issuer is permitted to submit a new application for its new THB Bond issue in the last application period prior to the expiry date of the approval.

For example, if the issuer is granted approval in December 11 for a maximum issue size of THB 2,000 million and within the approval period (i.e. by the end of August 12), the Issuer has only issued THB 1,000 million of THB Bonds, the issuer can submit a new application in July 12 (not in March 12).

Key Issues

Approval

Conditions and Requirements

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- If the issuer has not issued any THB Bonds within the 9-month approval period, the issuer is allowed to submit a new application after the expiry date of the previous approval.
For example, if the issuer is granted approval in December 11 and does not issue any THB Bonds by August 12 (i.e. within the 9-month approval period), the issuer will be permitted to submit a new application in November 12 (i.e. the next approval period after the expiry date of the previous approval).
- If the issuer is not granted approval by the MoF, the Issuer may, during the next application period, only submit a simple letter informing the MoF that it wishes to re-apply for the approval (by indicating any change of information or terms of its THB Bonds, if any) without having to re-submit a new application.

Basis for Considering the Grant of Approval

In granting its approval, the MoF will consider the following factors (in order of importance with the most important being listed first):

- credit rating;
- nature/type of issuer and its business sector;
- the issuer's previous issue of THB Bonds (i.e. if the issuer has fully issued THB Bonds as approved by the MoF);
- relationship with Thailand; and
- other factors, e.g. if the issuer is incorporated in ASEAN, China, Korea or Japan, use of proceeds and other related information, etc.

Conditions and Requirements

The Issuer must comply with the following duties and obligations required by the SEC (under the Notification of the Capital Market Supervisory Board No. TorJor. 14/2552, as amended):

- submit the following documents to the SEC prior to the Offering:
 - draft terms and conditions of the bonds; and
 - registration statement and draft prospectus of the bonds (except where the Offering will be made to no more than 10 investors);
- make the Offering within 9 months from the approval date thereof;
- appoint a representative of the bondholders who is qualified/licensed by the SEC (normally, a Thai commercial bank);
- arrange for and execute the terms and conditions of the bonds which must be substantially in the same form as that submitted to the SEC (as specified above);
- arrange for either: (i) a credit rating on the bond issue; or (ii) a credit rating on the Issuer (only applies to a case where the Offering is made to institutional type investors and high net worth investors); or (iii) (if any) a credit rating on a guarantor (only applies to a case where the guarantor and the Issuer have joint and several liability and where the guarantee is irrevocable); and
- appoint a contact person for the Issuer' in Thailand (for the purposes of receiving writs, summons, letters, orders, notices and other documents, or to contact the relevant authorities relating to the bonds).

Filing Requirements

Except in the case of a limited Offering to no more than 10 investors, the Issuer must submit a draft prospectus and registration statement (collectively, the "Filing Documents") in respect of the bonds to the SEC.

- Private Placement: If the Offering is to be made to institutional type investors and/or high net worth investors, the Filing Documents must be in the SEC's Form 69-S. Under Form 69-S, the following information is required:
 - objective of the offering;
 - name of the Issuer;
 - capital of the Issuer;

- amount and type of the bond offered;
- offer price;
- nature of the Issuer's business;
- financial condition (including financial statements), business operation, and material information of the business of the Issuer;
- management and major shareholders of the Issuer;
- auditor, legal advisor and regularly used financial institutions of the Issuer;
- procedures for subscription, allotment and allocation of the bonds;
- rights and restrictions related to the transfer of the bonds (if any);
- return on the bonds;
- collateral of the bonds (if any);
- name of the bondholders' representative;
- encumbrances on the Issuer's assets (only required in the case of unsecured bonds);
- total outstanding amount of debts under all bonds, debentures or notes previously issued by the Issuer (if any);
- details and terms of the bond payments (i.e. method(s) and place of payment and relevant due dates);
- procedures for the exercise of the bondholders' conversion of rights (if any);
- risk factors;
- terms and conditions of the bonds;
- source(s) of funds for the bond payment;
- credit rating either on the Issuer or the bonds or on a guarantor (only in the case of an "irrevocable" guarantee and the guarantor must agree to be, jointly with the Issuer, liable to the holders of the bonds);
- name and contact details of the Issuer's contact person in Thailand;
- type(s) of financial statement(s) and period(s) for submitting such financial statement(s) to the relevant authority(ies) in the country of the Issuer;
- the Issuer's intention to submit its financial statement(s) either in Thai or English language to the SEC annually; and
- the cover pages of the Filing Documents must contain the following statement:

"Prior to making a decision to invest in the Bonds, investors should exercise their own judgment to consider detailed information relating to the Issuer and the conditions of the Bonds, including the suitability for investment and the relevant risk exposure. The effectiveness of the registration statement and draft prospectus does not represent that the Securities and Exchange Commission or the Office of the SEC has suggested investment in the Bonds nor shall they assure the value or returns on the Bonds nor shall they certify the accuracy and completeness of information contained in the registration statement and draft prospectus. The liability for certification of the accuracy and completeness of information contained in the registration statement and draft prospectus is vested in the Issuer.

Should any information in the registration statement and draft prospectus contain any false statement or omission of any material information which should be disclosed, the Bondholders who have purchased the Bonds within one year from the effective date of the registration statement and draft prospectus shall be entitled to claim damages from the Issuer pursuant to Section 82 of the Securities and Exchange Act B.E. 2535 (1992) within one year from the date on which the Bondholders have become aware of, or should have been aware of, such false statement or omission of the material information, but not exceeding two years from the effective date of the registration statement and draft prospectus.

Investors can review or request a copy of the registration statement and prospectus filed with the Office of the SEC from the Information Center of the Office of the Securities and Exchange Commission at 15th Floor, GPF Towers B, 93/1 Wireless Road, Lumpini, Patumwan, Bangkok during the Office of the SEC's business days and hours between 9.00 - 12.00 hours and 13.00 - 16.00 hours or via <http://www.sec.or.th>."

- **Public Offering:** If the Offering is to be made to the general public, the Filing Documents must be in the SEC's Form 69-FD. The Filing Documents must also contain information on all limitations and risks relating to legal proceedings against the Issuer and relevant jurisdictions in which the Issuer could be sued and enforced. If the Issuer is a holding company, information on the Issuer's controlling shareholder(s) or on a shareholder holding more than 50% of the total number of shares (with voting rights) in the Issuer (collectively, the "Shareholder") must be provided in Form 69-FD. If the Issuer or the Shareholder is a government of a foreign country, Form 69-FD must also contain financial and revenue information on its country for the last five consecutive years prior to the submission date of the Filing Documents. Such information must include at least the gross national product, balance of trade, balance of services, import and export information, national reserves, domestic and foreign liabilities including estimated foreign debt repayments.

In case of a public offering, financial statements disclosed in the Form 69-FD must be:

- prepared in accordance with the International Financial Reporting Standards and International Accounting Standards, or such comprehensive body of accounting standards as the International Accounting Standards Board may adopt from time to time; and
- audited in accordance with the International Standards on Auditing, or such comprehensive body of auditing standards as may be adopted by the International Auditing and Assurance Standards Board from time to time.

There are also other certain conditions and requirements relating to the financial statements pursuant to Form 69-FD.

Certification of Information

The Filing Documents must be certified by an authorized director(s) of the Issuer (each page of the documents must also be initialled by any officer of the Issuer who is authorized to initial the documents). If the filing documents are signed outside of Thailand, (i) the certification page of each of the draft prospectus and registration statement; and (ii) relevant Power of attorney (if applicable), will need to be notarised by a notary public in the country which the filing documents are executed.

Financial Advisor

A financial adviser is not required.

Language

The Filing Documents may be submitted to the SEC in English language regardless of whether the Offering is to be made to the general public.

Filing Effective Periods

The Issuer will be permitted to sell the bonds after the filing has taken effect. The filings will be effective as set out below:

- Public Offering: Filing will take effect after the lapse of 14 days from the SEC's receipt of completed Filing Documents;
- Offering to Institutional Investors/High-Net Worth Investors: Filing will take effect on a business day following a submission date of the completed Filing Documents to the SEC.

If you require any advice in relation to the issues raised in this briefing note please contact Dounporn Prasertsomsuk at the contact details above.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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