

## Thailand: The SEC revamps regulations on offerings of bonds by foreign entities

### In brief

The Securities and Exchange Commission of Thailand (SEC) has amended the requirements for offerings by foreign entities of Baht-denominated bonds (Baht bonds) and foreign-currency-denominated bonds (FX bonds). These revisions aim to enhance protection for investors and market credibility. The changes also mark the transfer from the Ministry of Finance of Thailand (MOF), which until now had the power to grant approval to foreign issuers for issuances of Baht bonds, to the SEC. The amendments came into effect on 1 January 2024.

### In this issue

[In brief](#)[In more detail](#)[Contact Us](#)

### In more detail

#### Key updates

The regulations<sup>1</sup> created the following key changes:

1. **MOF approval.** Requirements to obtain approval from the MOF were removed from the regulations of the Capital Market Supervisory Board of Thailand (CMSB). According to an SEC [press release](#), an offering of Baht bonds no longer requires approval from the MOF. However, as of the date of this alert, we have not come across any regulations that repeal or cancel the regulations of the MOF.
2. **Credit rating.** Baht bonds or FX bonds issued by a foreign issuer must bear an investment grade issue rating from an international rating agency. This requirement applies to all types of offerings except for a private placement for up to 10 specific investors<sup>2</sup> (PP10). The issuer must procure the investment grade issue rating prior to submitting the application to the SEC as this information is required for the application. In addition, the issuer must maintain the credit rating (including the investment grade status) throughout the tenor of the bonds, although the regulations are silent on the consequences if the rating is subsequently downgraded to below the investment grade during the tenor. (See also item 5.)

<sup>1</sup> (1) Notification of the Capital Market Supervisory Board No. TorChor. 60/2566 Re: Application for and Approval of the Offering for Sale of Newly Issued Debt Instruments to the Public in General (No. 5), dated 26 December 2023;

(2) Notification of the Capital Market Supervisory Board No. TorChor. 61/2566 Re: Application for and Approval of the Offering for Sale of Newly Issued Debt Instruments on a Private Placement Basis and the Offering of Convertible Debentures to Qualified Investors (No. 5), dated 26 December 2023; and

(3) Notification of the Capital Market Supervisory Board No. TorChor. 62/2566 Re: Temporary Waiver on the Credit Rating Requirements for the Approval of the Offering for Sale of Baht-Denominated or Foreign-Currency-Denominated Bonds or Debentures in Thailand on a Private Placement Basis by Foreign Entities, dated 26 December 2023.

<sup>2</sup> (1) 10 institutional investors in any four-month period; or

(2) 10 high-net-worth and/or ultra-high-net-worth investors with a total offering amount not exceeding THB 50 million at any time.

3. **ThaiBMA registration.** The amendments make this requirement apply to all types of offerings of Baht bonds and FX bonds (including PP10 offerings). For Baht bonds, it is the same as the requirement under the MOF regulation, but it is a new development for FX bonds, particularly PP10 offerings, which in the past did not require registration with the Thai Bond Market Association (ThaiBMA).
4. **Debenture holders' representative.** Similar to the ThaiBMA registration requirement, the amendments adopt the concept in the MOF regulation on Baht bonds and make this requirement apply to all types of offerings of Baht bonds and FX bonds (including PP10 offerings) regardless of whether there is any security (collateral) or guarantee for the payment of bonds or any credit enhancements.
5. **Waiver of credit ratings for refinancing bonds.** To alleviate the impact on existing Baht bonds or FX bonds which do not have the international investment grade credit rating, a new regulation provides a waiver of the credit rating requirements for a foreign issuer that wishes to use proceeds from the sale of new bonds to repay the existing ones. The waiver is available to issuers that have offered the bonds prior to, and the bonds were still outstanding as of, 31 December 2023. Eligible offerings are those made to ultra-high-net-worth investors, high-net-worth investors, and institutional investors, and it is applicable only to an offering on a standalone basis. A public offering or an offering under a medium term note program is not eligible for the waiver. In addition, the issuer must complete the issuance and offering of the refinancing bonds by 31 December 2028.

Among other criteria, the issuer of Baht bonds must submit the application for the waiver no later than 31 July 2028, while simultaneously submitting the application to the SEC for approval to offer the refinancing bonds. The SEC has the power, but is not obliged, to grant the waiver. In theory, it means that at the time the approval application is submitted to, and the registration statement and draft prospectus are filed with, the SEC, the issuer does not know yet whether it is qualified for the offering. It may take up to 60 days (a 30-day review period and another 30-day consideration period) for the SEC to grant the waiver. The deadline does not apply to the application for a waiver in the case of FX bonds.

In addition, the terms and conditions of both the refinancing bonds and the refinanced bonds must be similar to each other, except for pricing terms, such as tenors of the bonds and interest rates. The amount of the refinancing bonds must not exceed the amount of existing bonds that are to be refinanced. From the letter of the law, we understand that the amount refers to the principal amount only.

Finally, the issuer is required to disclose information on topics prescribed by the SEC. The information to be disclosed includes procedures to enforce the rights under the bonds pursuant to the relevant law. This requirement will necessitate the appointment of legal counsel with respect to the laws of the relevant jurisdictions to assist in preparing and reviewing the disclosure.

#### Comparison table on Baht bonds regulations

	Previous	Current
<b>Issuer</b>	<ol style="list-style-type: none"> <li>1. An international financial institution established under a convention, irrespective of whether or not Thailand is party to such convention;</li> <li>2. A foreign<sup>3</sup> government's agency or organization, or financial institution of a foreign government established under a specific law;</li> <li>3. A juristic person established under a foreign law; or</li> <li>4. A special purpose vehicle (SPV) established for a securitization transaction of which the originator is an agency or organization of a foreign government.</li> </ol>	<ol style="list-style-type: none"> <li>1. An agency or organization of a foreign government;</li> <li>2. An international organization; or</li> <li>3. A juristic person established under a foreign law.</li> </ol>

<sup>3</sup> (1) Country members in ASEAN, Japan, Republic of Korea and People's Republic of China; or

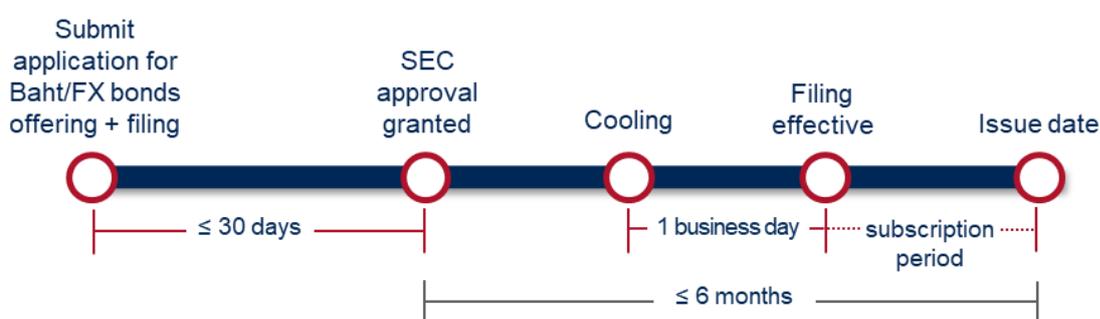
(2) countries that the Minister of Finance deems appropriate.

	Previous	Current
Approval	MOF and SEC	SEC
Application period	<b>MOF:</b> Three times a year, i.e., in March, July and November <b>SEC:</b> Any time	Any time
Issuance period	Within nine months from the MOF approval <b>and</b> within six months from the SEC approval	Within six months from the SEC approval
Tenor	At least three years	Not specified
Credit rating	Requirements vary depending on types of issuing entities, but no minimum credit rating requirements	Investment grade issue rating issued by an international credit rating agency <b>and</b> need to be maintained throughout the tenor of the Baht bonds (except for the offering to PP10)
Registrar	Thailand Securities Depository Company Limited	Not specified
Registration	ThaiBMA	ThaiBMA

### Put into practice

To illustrate how the new regulations will work in practice, we provide below a sample timetable for an offering (on a standalone basis) by foreign issuers of senior and unsecured Baht/FX bonds to institutional investors and high-net-worth investors, which is one of the most popular routes of offering (Scenario 1). In addition, Scenario 2.1 and Scenario 2.2 apply to refinancing issuances of Baht bonds and FX bonds, respectively, where the issuer requires a waiver of the credit rating requirements.

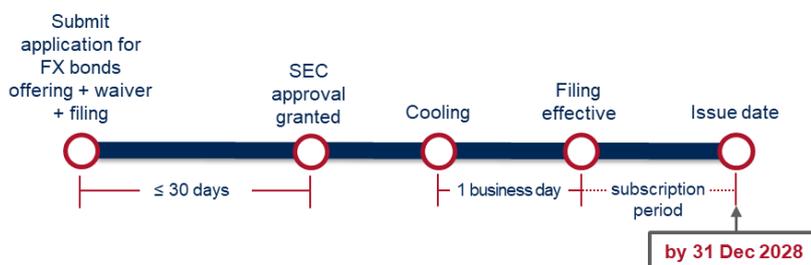
### Scenario 1 Investment grade Baht/FX bonds



## Scenario 2.1 Credit rating waived refinancing Baht bonds



## Scenario 2.2 Credit rating waived refinancing FX bonds



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