

THAILAND

Investment rules of the world

About

At DLA Piper, we have one of the largest finance and projects teams in the world with more than 600 dedicated lawyers and an established local law firm network. We share knowledge and skills in debt instruments, debt securities, funds, derivatives and portfolios, as well as energy, infrastructure and other projects, across Europe, the Middle East, Africa, Asia Pacific and the Americas.

When and wherever we work for you on finance and investment deals and projects, you can rely on our international platform; we are backed by the network and resources of one the largest and most-connected business law firms in the world.

We enjoy being part of your team, bringing experience across sectors, borders and financial products, supporting you on first-of-a-kind deals, in new markets and to grow.

With global perspective, we can help you to realize your financial strategy in whichever markets you do business.

Investment Rules of the World

With input from across our global network, this guide covers key legal topics for different financial activities and projects and gives you an overview of the points you may consider when initially looking at financing or investing in particular jurisdictions. Please [contact us](#) if you would like to discuss any legal issues or solutions for your business. We also welcome your feedback about this guide via investmentrules@dlapiper.com.



Thailand

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Capital markets and structured investments

Issuing and investing in debt securities

Are there any restrictions on issuing debt securities?

Generally, restrictions on the issuance of debt securities is dependent on the types of debt securities to be issued. For example:

- **Bonds / debentures and notes** – A private limited company can issue bonds/debenture subject to approval from the SEC. A public limited company can issue bonds/debentures, convertible bonds/debentures, notes and structured notes with filing and/or approval as well as report requirements by the SEC.
- **Basel III Subordinated debt instruments** – An issuer must be a financial institution under the Financial Institution Act B.E. 2551 (2008). A branch of a foreign commercial bank (although categorized as a financial institution under Thai laws) is not allowed to issue Basel III Subordinated debt instruments.

A foreign company can offer a sale of its bonds and/or debentures in Thailand and may be exempt from certain duties (eg the duty to file certain documents and a prospectus) if the foreign debt securities are offered to not more than ten investors within four months as this would be deemed a private placement.

Thai companies, foreign companies and certain entities under foreign laws (eg a unit or organization of foreign government, international organization and legal entities established under foreign laws and supervised by an authority which is a member of the International Organization of Securities Commissions) can issue bonds denominated in a foreign currency in Thailand provided the issuing entity complies with the relevant filing, approval and reporting requirements of the SEC.

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What are common issuing methods and types of debt securities?

There are two major types of debt securities recognized under Thai law, being bonds / debentures and bills / notes, including:

- debt securities characterized by the type of interest or payment such as fixed-rate securities, floating-rate securities, variable-rate securities, zero-coupon securities and high-yield bonds;
- guaranteed securities, subordinated securities, perpetual debt securities (ie debt securities that have no specified redemption date);
- derivative securities such as securities linked to the value of one or more reference asset including shares, commodities, interest rates, currency rates or indexes;
- equity-linked securities such as convertible debentures (ie debt securities convertible into the equity of the issuer); and
- warrants (securities giving the holders the option to purchase the equity of the issuer or a related company).

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What are the differences between offering debt securities to institutional / professional or other investors?

Under the laws of Thailand, offering debt securities to institutional/professional or other investors is differentiated by whether the offering is by way of private placement or public offering.

A private placement of debt securities can be made by way of:

- limited offer of debentures:
 - to not more than ten investors within a four month period – calculation of investors will base on the actual beneficiary whose shares may be held via broker, dealer or underwriter;
 - to Institutional Investors;
 - to High Net Worth (HNW) Investors regardless of whether the offer is made to Institutional Investors or not;
 - to existing creditors for purpose of a debt restructuring;
 - which are made with specific relaxation from the Securities and Exchange Commission (SEC); or
- limited offer of bills:
 - to Institutional Investors (short-term bills);
 - to High Net Worth (HNW) Investors whereby an issuer shall be a financial institution, securities company or a life insurance company regardless of whether the offer is made to Institutional Investors or not (short-term bills); or
 - to limited to persons related to the issuer which does not exceed 10 bills at any time.

For the purposes of the above:

- 'Institutional Investors' means specific institutional investors, e.g. finance companies, securities companies, insurance companies and mutual funds.
- 'HNW Investors' means a juristic person or a natural person having shareholdings or investments in securities or derivatives contracts reaching the amount specified by the Securities and Exchange Commission (SEC), as follows:
 - **for a juristic person HNW** – shareholders' equity of at least THB100 million, or direct investment in securities of at least THB20 million or at least THB40 million (including deposits) based on the latest audited financial statements; and
 - **for a natural person HNW** – net assets of at least THB50 million (excluding main residence), annual income of at least THB4 million, or funds for direct investment in securities of at least THB10 million or at least THB20 million (including deposited funds).

The laws of Thailand also make a distinction between the offering of securities by Thai and non-Thai issuers.

The main distinction between the offering of debt securities by private placement or public offering largely concerns approval and disclosure requirements.

The public offering of debt securities requires the approval of the SEC, rating requirements and detailed disclosure and reporting requirements. Private placement is simpler as rating requirements and approval from SEC are not normally required.

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When is it necessary to prepare a prospectus?

Subject to certain exemptions, submission of a draft prospectus is generally required upon offering of debt securities. Exemptions includes, for example:

- offering debt securities to investors outside Thailand;

- offering newly issued bonds/debentures without transfer restriction by way of limited offer or to institutional investors established under foreign laws; and
- offering debentures with certain conditions specified by the Securities and Exchange Commission (SEC).

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What are the main exchanges available?

Apart from the primary market in which debt securities are traded after issuance, the Thai Bond Exchange (TBX) regulated by the Stock Exchange of Thailand is the main exchange platform. The TBX enhances the bond secondary market. Prior to the TBX, bonds were traded over-the-counter among the institutional investors. Currently, only bonds issued by publicly listed companies are allowed to be traded on the TBX.

An investor seller needs to open an account with a member of the TBX or a brokerage company in order to sell and purchase securities. Investors submit orders to sell or purchase through such members or brokerage companies who will forward such order into the exchange platform. Automatic Order Matching is applicable to match orders of sale and purchase of debt securities.

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Is there a private placement market?

There is a limited private placement market in Thailand.

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Are there any other notable risks or issues around issuing or investing in debt securities?

Issuers are required to take responsibility for prospectuses for debt securities. Misleading statements in, or omissions from, any applicable offering document can give rise to both civil and criminal liabilities under regulations of the Securities and Exchange Commission and other applicable laws.

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Establishing and investing in debt / hedge funds

Are there any restrictions on establishing a fund?

Establishing a fund, offering fund securities and operating a fund, among other things, are regulated activities under the Securities and Exchange Act B.E. 2535 (1992) (SEA) and therefore subject to regulation by the SEC and the SET.

The mutual fund for Institutional Investors and Ultra High Net Worth (UHNW) Investors under the supervision of the SEC are similar in nature to hedge funds (eg no investment restrictions on the type of financial assets, no ratio requirements on investment). The mutual fund set up for this investment purpose must not be a retirement mutual fund, ETF fund or long term equity fund.

Investment made by mutual funds must comply with the governing rules and investment policy specified in the prospectus. The investment policy must be risk diverse in terms of assets, industrial sector and in line with investment restrictions, if any.

For the purposes of the above:

- 'Institutional Investors' means specific institutional investors, e.g. finance companies, securities companies, insurance companies and mutual funds.
- 'UHNW Investors' means a juristic person or a natural person having shareholdings or investments in securities or derivatives contracts reaching the amount specified by the SEC, as follows:

- **for a juristic person UHNW** – shareholders' equity of at least THB200 million, or direct investment in securities of at least THB40 million or at least THB80 million (including deposits) based on the latest audited financial statements; and
- **for a natural person UHNW** – net assets of at least THB70 million (excluding main residence), annual income of at least THB10 million or THB7 million (excluding spouse's income), or funds for direct investment in securities of at least THB25 million or at least THB50 million (including deposited funds).

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What are common fund structures?

Common forms of funds include:

- open-ended and closed-ended funds; and
- retail and non-retail funds.

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What are the differences between offering fund securities to professional / institutional or other investors?

Retail funds

Retail funds are known as mutual funds under Thai law. Open-ended retail funds or close-ended retail funds must be authorized and supervised by the SEC and the SET.

Retail funds are subject to substantial regulatory oversight and restrictions, including obligations with regard to independent custodian /depository arrangements for assets, investment and borrowing powers specifications (for open-ended retail funds), concentration requirements and other matters.

Institutional / professional funds

Non-retail funds are known as private funds under Thai law and are subject to authorization and supervision by the SEC. Private funds are described in detail in [Entity establishment](#).

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Are there any other notable risks or issues around establishing and investing in funds?

Establishing funds

Risk can emanate from a fund manager's failure to comply with laws, rules, regulations, prescribed practices, internal policies, procedures or prospectus rules approved by the SEC.

For property funds or Real Estate Investment Trusts, foreign investment limits will apply. Not more than 49% of all purchased investment units can be held by foreign investors. In addition, the SEC also requires the registrar to oversee the ratio of foreign investment units and to reject any transfer of units resulting in the violation of foreign investment limits.

Investing in funds

Apart from usual commercial risks, there are no notable risks associated specifically with investing in funds in Thailand.

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Managing and marketing debt / hedge funds

Are there any restrictions on marketing a fund?

Marketing and advertisements must not contain any misleading or false information. The asset management company (which must be approved and licensed by the SEC) must provide investors with appropriate services and complete information relating to the funds and investments, especially if the funds have special features. Any information disclosed for the purposes of marketing or advertisement of investment products (including securities and derivatives contracts as well as funds and collective investment schemes established under foreign law) will be subject to the regulations of the SEC.

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Are there any restrictions on managing a fund?

The asset management company must have a reliable operational system that supports segregation of duties, compliance, risk management, recruitment and monitoring of business operations. The systems should also strengthen efficiency of internal control and recordkeeping for audit trails, and enforce information barriers to safeguard non-public information that could cause conflicts of interest

The asset management company must conduct due diligence and implement an efficient policy and procedure to prevent conflicts of interest covering at least the following areas:

- affiliated transaction;
- proprietary trading;
- front running;
- staff dealing; and
- soft dollar / rebate.

Personnel in the asset management company must be qualified under Securities and Exchange Commission regulations.

An asset management company can operate other business only if such other business will not cause risk to clients' assets or create a conflict of interest with its securities business and provided that it will support its fund management activities.

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Entering into derivatives contracts

Are there any restrictions on entering into derivatives contracts?

A person, being a natural person or a legal entity, operating derivatives business in Thailand will ordinarily have to be authorized under the Derivatives Act B.E. 2546 (2003).

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What are common types of derivatives?

Common types of derivatives traded in Thailand include:

- forwards, being contracts in which one party is obliged to deliver goods as specified in the contract to the other party at a given time in the future, and the other party, in turn, is obliged to make payment for such goods at a price specified therein;
- futures, being contracts in which one party is obliged to make payment to the other party, or *vice versa*, in the amount which is equivalent to the difference between the price or value of goods or other variable specified in the contract and the price or value of such goods or variable prevailing at a given time or period of time in the future as specified in the contract; and
- swaps and options, being contracts in which one party is entitled to demand the other party delivers goods, or makes payment for goods, or makes payment in the amount which is equivalent to the difference between the price or value of goods or variable

specified in the contract and the price or value of such goods or variable prevailing at a given time or period of time in the future as specified in the contract, or to demand the other party enters into any of the contracts described above.

Derivatives may be traded over-the-counter or on an organized exchange, being the Thailand Futures Exchange (TFEX).

Permitted underlying assets in respect of which futures and options may be traded on the TFEX include:

- **equities** – stock indexes and individual stocks;
- **debt instruments** – bonds and interest rates;
- **commodities** – precious metals, base metals and energy; and
- **other indexes** – exchange rates, commodity indexes and others as may be announced by the Securities and Exchange Commission.

Currently, products available in Thailand include SET50 Index Futures, SET50 Index Options, Single Stock Futures, Gold Futures, Interest Rate Futures, USD Futures and Sector Index Futures.

The Bank of Thailand also regulates and supervises certain types of over-the-counter financial derivatives conducted by financial institutions.

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Are there any other notable risks or issues around entering into derivatives contracts?

The Thai derivatives market has developed in recent years. Significant regulatory focus has been placed on transparency and minimizing counterparty defaults in over-the-counter derivatives in particular. The Bank of Thailand has also implemented Basel III.

Since 2010, Thai law has recognized the derivative warrant, which is an instrument that gives the holders rights to buy and sell underlying securities or the right to earn profits from derivative warrant prices or an underlying asset's index. The SEC allows only derivative warrants with securities as the underlying asset. The issuer of a derivative warrant must be a third party and not the listed company issuing the underlying securities.

Generally, there are two types of derivative warrant as follows.

Non-collateral derivative warrant

The risk of this derivative warrant will be the issuer's obligation to deliver the underlying securities or pay the differences. The SEC will consider the issuer's risk management, financial condition and operating system as criteria for granting approval for offering of non-collateral derivative warrants. Issuers can be securities companies or commercial banks having in place robust risk management systems, financial stability and effective controls operations.

Collateral derivative warrant

The risk of this derivative warrant will depend on the collateral, not the issuer's risk management. The SEC will consider the safekeeping of the underlying securities by trustee, as specified by the Trust for Transactions in Capital Market Act B.E. 2550 (2007).

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Debt finance

Lending and borrowing

Are there any restrictions on lending and borrowing?

Lending

Lending is generally not a regulated activity unless the lending activity ordinarily carried out by certain business operators such as the financial institution, securities company or regulated non-bank business operators providing consumer-related loans eg personal loan, nano finance and credit card business which is regulated by BOT or pico finance which is regulated by the FPO.

The general restrictions on lending relate to interest rate and debt collection activities. The maximum interest rate for lending is 15% per annum unless certain cases apply such as a loan provided by financial institutions or a consumer loan. Violation to the maximum interest rate could result in voidance of the interest rate plus separate criminal penalty.

Under Thai law, directors have a general duty to apply the diligence of a careful businessman in their conduct of a company's business. Adequate corporate benefit must be shown by the directors to derive from the company lending or that such lending is for the best interest of the company and necessary in the ordinary course of the business. The safe approach is often to have the members of the company approve the lending by resolution.

Borrowing

Borrowing is not a regulated activity. However, borrowing limits may apply in certain situations. For example, if the borrower has been granted certain incentives, such as under the promotional investment scheme of the Board of Investment of Thailand or it has obligations regarding financial indebtedness under contractual agreements.

If the borrower is a retail consumer, the borrower will benefit from protections under certain laws concerning personal loans, nano finance, pico finance and consumer protection.

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What are common lending structures?

Lending can be structured in a number of different ways to include a variety of features depending on the commercial needs of the parties.

A loan can either be provided on a bilateral basis (a single lender providing the entire facility) or syndicated basis (multiple lenders each providing parts of the overall facility).

Syndicated facilities by their nature involve more parties (such as agents and trustees), are more highly structured and involve more complex documentation. Larger financings will typically be done on a syndicated basis with one of the syndicate taking the lead in coordinating and arranging the financing.

Loans will be structured to achieve specific objectives, eg term loans, working capital loans, equity bridge facilities, project facilities and letter of credit facilities.

Loan durations

The duration of a loan can also vary between:

- a term loan, provided for an agreed period of time but with a short availability period;
- a revolving loan, provided for an agreed period of time with an availability period that extends nearer to maturity of the loan and which may be redrawn if repaid;
- an overdraft, provided on a short-term basis to solve short-term cash flow issues; or
- a standby or a bridging loan, intended to be used in exceptional circumstances when other forms of finance are unavailable and often attracting a higher margin.

Loan security

A loan can either be secured, unsecured or guaranteed.

Loan commitment

A loan can also be:

- committed, meaning that the lender is obliged to provide the loan if certain conditions are fulfilled; or
- uncommitted, meaning that the lender has discretion whether or not to provide the loan.

Loan repayment

A loan can also be repayable on demand, on an amortizing basis (in instalments over the life of the loan) or scheduled (usually meaning the loan is repayable in full at maturity).

The laws of Thailand do not allow accrued interest to be capitalized to the principal amount unless the interest has been in default for at least one year and compound interest is prohibited. Therefore, the principal amount of a loan is generally structured to be due and payable in full at the maturity date or on demand, while the interest and other payments will generally be due and payable periodically or upon occurrence of certain trigger events. The relevant statutory limitation periods are five years for loan instalment repayments and ten years for scheduled repayments of loans in full at maturity.

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What are the differences between lending to institutional / professional or other borrowers?

Lending to institutional and/or professional borrowers is subject to less regulatory oversight and so less burdensome from a compliance perspective.

By contrast, lending in the context of consumer lending is a regulated activity under the supervision of Bank of Thailand and Fiscal Policy Office.

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Do the laws recognize the principles of agency and trusts?

Only the agency concept is recognized under Thai law.

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Are there any other notable risks or issues around lending?

Generally

Loan agreements and other finance documents are subject to specific provisions under the Civil and Commercial Code of Thailand.

Agreements are also subject to general contractual principles, rules regarding excessive interest rates and consumer protection law. In certain circumstances, breach of these rules is a criminal offence.

As noted above, if the business operator providing lending as non-banks is a foreign majority owned company, a foreign business license /certificate is needed to be granted by the Ministry of Commerce.

Standard form documentation

There is no legally required standard form documentation.

While it has become common practice to use the standard form loan agreements recommended by the Asia Pacific Loan Market Association (APLMA), it is prudent for such forms to be amended by a Thai-qualified lawyer as there are material concepts and provisions in the APLMA forms which are not recognized or suitable under Thai law.

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Are there any other notable risks or issues around borrowing?

The laws of Thailand do not allow accrued interest to be capitalized to the principal amount unless the interest has been in default for at least one year. Compound interest is also prohibited under Thai Law.

From a borrower's perspective, if the borrower has paid to the lender interest at a rate which is not permissible under the laws of Thailand, the borrower cannot later claim or bring an action against the lender for a refund from the lender of such overpayment of interest.

From the lender's perspective, pursuant to the Excessive Interest Rate Prohibition Act B.E. 2560 (2017), excessive interest rates and the use of structured payments or arrangements to conceal the use of excessive rates of interest are prohibited and subject to both civil and criminal sanctions.

If a foreign majority owned company which is incorporated in Thailand provides a guarantee or use its assets as collateral to secure loans either in Thailand or outside Thailand, a foreign business license/certificate is additionally needed to be granted by the Ministry of Commerce for the provision of security.

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Giving and taking guarantees and security

Are there any restrictions on giving and taking guarantees and security?

Some of the key areas affecting the giving of guarantees and security are as follows.

Capacity

It is important to check the constitutional documents of a company giving a guarantee or security to ensure it has an express or ancillary power to do so and there are no restrictions on the directors' powers that would be preventative. Under Thai law, directors have a general duty to apply the diligence of a careful businessman in their conduct of the company's business; as such, they will need to be able to show that adequate corporate benefit is derived from the company giving the guarantee or security or that such guarantee or security granted as it is necessary in the course of ordinary business of the company and the best interests of the company. The safe approach is often to have the members of the company approve the giving of the guarantee or security by resolution, however, shareholders are generally able to ratify the actions of the company directors. Thai law does not prohibit upstream guarantees and therefore guarantees may be provided by a subsidiary to guarantee the performance of its parent company obligations provided such action is contemplated in the company's objectives.

Insolvency

Guarantees and security may be at risk of being set aside under Thai insolvency laws if the guarantee or security was granted by a company within a certain period of time prior to the onset of insolvency. This would be the case if the company giving the guarantee or security received considerably less consideration, and as such, the transaction was at an undervalue. If such undervalued transaction is made within the period of one year prior to the insolvency petition or after that, it can be revoked. If the company provides security with an aim to give advantage to one creditor over other within three months before the insolvency petition or thereafter, such security can be revoked. If fraudulent motive can be shown, the company and/or its directors may be liable for a fine and / or imprisonment.

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What are common types of guarantees and security?

Common forms of guarantees

According to the CCC, a guarantee can secure the performance and payment of principal obligations which must legally valid. A guarantee must be made in writing in order for it to be used as evidence in court proceedings and only an original signed version may be used as evidence in such proceedings.

Common forms of security

There are three basic types of security interest that can be created under Thai law:

- a pledge under the CCC;
- a mortgage under the CCC; and
- a business security under the Business Security Act B.E. 2558 (2015) (BSA); and
- a leasehold right under the Leasehold Right in Immovable Property Act B.E. 2562 (2019) (LRIPA).

A mortgage may only be taken over immovable property and certain registrable movable property, e.g. registered machinery, ships of five tons and over, floating houses and beasts of burden (ie elephants, horses, cows, buffalos, mules and donkeys). A pledge, on the other hand, is available only for movable property.

Business security is a new security interest recognized under Thai law which may be granted by a legal entity or a natural person over its business, including all property relating to such business. Collateral under BSA includes:

- the business itself;
- its claims;
- movable property that the security provider uses in its business operation (e.g. machinery, inventory or raw materials);
- immovable property if the security provider operates a business involving immovable property (e.g. property development business); and
- intellectual property.

In addition to the business security, a leasehold right in immovable property is recently upheld as another class of asset under the new law, i.e. LRIPA which is aimed to increase the economic possibilities of the leased property and investment of immovable properties and growth in Thai economy.

Under the LRIPA, the registered leasehold right can be transferred and used as security, for example, an owner of the property who registers the leasehold right over such property is able to transfer such leasehold right to the lessee and the lessee can utilise such leasehold right as if they are the owner of the immovable property. The 30-year period is the maximum leasehold right duration permissible under the LRIPA.

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Are there any other notable risks or issues around giving and taking guarantees and security?

If a guarantor is a company, it must have an express or ancillary power to provide a guarantee or security to secure the debt of another person. A foreign owned company must hold a foreign business license in order to provide a guarantee or security to secure debt of another person.

Giving or taking guarantees

- The guaranteed obligation, objectives and type of obligation, maximum amount of guarantee and period of time that such obligation will be incurred must be expressly specified unless the guarantee is in respect of a series of transaction which can be terminated at the sole discretion of the guarantor by informing the creditor.
- An agreement results in the guarantor being jointly liable with the debtor or as primary debtors is void unless the guarantor is a legal entity who agrees to such joint liability.
- The creditor must notify the debtor's default to the guarantor in writing within 60 days of default, otherwise the guarantor will be released from its obligations in respect of the guaranteed interest, damages and other charges arising from the lapse of such 60 days.
- The liability of the guarantor will be discharged once the obligations of the debtor are extinguished.

- Advance consent granted by the guarantor for any extension of the guarantor's obligation or the guarantee period is not enforceable under Thai law.

The above-mentioned provisions are mandatory under Thai Law and cannot be agreed otherwise by the parties as such terms will be void or unenforceable. The guarantor is not allowed to provide a mortgage of the guarantor's assets to secure another person's debt with the condition to be liable for the deficit amount after the enforcement of mortgaged property unless (i) such other person is a legal entity, (ii) the mortgagor is a director or a controlling person of such legal entity and (iii) the guarantor separately enters into a guarantee agreement. The purpose of this provision is to limit the liability of the mortgagor to only the mortgaged asset, so that the mortgagor will not have to be liable for the deficit of the outstanding debt of another person. Under Thai law, the mortgagor will not be liable for the deficit amount of money at the time of enforcement, if it is a mortgage to secure another person's debt. Therefore, the exemption will apply if the mortgagor / guarantor is the director or the controlling person of the legal entity who is a primary debtor.

Guarantees can be made either at the time of entering into the underlying obligation or after that.

It should be noted that if a creditor rejects the requests of a guarantors to perform the guaranteed obligations once such obligations are due, the guarantor will be released from its liability.

Giving or taking security

PLEDGE

- Physical possession of pledged property is required to perfect a pledge. As a result, the pledge will be terminated once the pledged property is returned into the possession of pledgor.
- Shares in a company can be pledged but it will only be enforceable against third parties once such pledge is recorded in the share register book of the company whose shares are pledged. A pledge of transferable instruments eg notes must be endorsed on the pledged instrument.
- Prior to enforcement of a pledge, the pledgee must notify the pledgor in writing within a specified period of time unless the pledged property are notes.
- A pledge is enforced by the selling the pledged property at public auction and the pledgee must notify the pledgor of the date and time of such sale.
- The pledgor is liable for the deficit amount of money after the enforcement of pledged property.

MORTGAGE

- A mortgage is required to be made in writing and registered with the relevant authority, e.g. the local land office is the registry for land mortgage and the Office for Machinery Registration is the registry for mortgage on machinery, otherwise the mortgage will be void.
- The means of enforcement of a mortgage is limited only to selling the mortgaged property at public auction or to foreclose the mortgaged property.
- Prior to enforcement of a mortgage, the mortgagee must provide the debtor and the mortgagor at least 60 days' notice in writing to perform the obligation.
- The mortgagor will not be liable for any deficit amount of money following enforcement of the mortgage, if the mortgage is granted to secure other person's debt.

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Financial regulation

Law and regulation

What are the main laws and regulations that apply to entities that are involved in finance and investments generally?

Generally

Civil and Commercial Code of Thailand

Securities and Exchange Act B.E. 2535 (1992)

Financial Institution Act B.E. 2551 (2008)

Payment System Act B.E. 2560 (2017)

Security Business Act B.E. 2558 (2015)

Consumer credit

Civil and Commercial Code of Thailand

Credit Information Business Act B.E. 2545 (2002)

Consumer Protection Act B.E. 2522 (1979)

MOF Notification re Business Subject to Approval to Clause 5 of the Revolutionary Council Decree 58 as amended

MOF Notification re Business Subject to Approval to Clause 5 of the Revolutionary Council Decree 58 (Regulated Personal Loan) as amended

MOF Notification re Business Subject to Approval to Clause 5 of the Revolutionary Council Decree 58 (Regulated Nano Finance) as amended

MOF Notification re Business Subject to Approval to Clause 5 of the Revolutionary Council Decree 58 (Pico Finance) as amended

MOF Notification re Business Subject to Approval to Clause 5 of the Revolutionary Council Decree 58 (Regulated Peer-to-Peer Lending Platform Business)

Mortgages

Civil and Commercial Code of Thailand

Security Business Act B.E. 2558 (2015)

Corporations

Civil and Commercial Code of Thailand

Public Limited Companies Act B.E. 2535 (1992)

Foreign Business Act B.E. 2542 (1999)

Investment Promotion Act B.E. 2520 (1977)

Funds and platforms

Securities and Exchange Act B.E. 2535 (1992)

Emergency Decree on Digital Asset Business B.E. 2561 (2018)

Ministerial Regulations - Approval for operation of securities business B.E. 2551 (2008)

Notification of the Office of the Securities and Exchange Commission No. SorNor. 87/2558 - Criteria, conditions and method of management of Mutual Funds for General Investors, Mutual Funds for Non-Retail Investors, Mutual Funds for Institutional Investors and Private Funds

Notification of Capital Market Supervisory Board No. TorNor. 88/2558 - Establishment of Mutual Funds for General and Non-Retail Investors and Execution of Agreements for Private Fund Management

Notification of Capital Market Supervisory Board No. TorNor. 89/2558 - Criteria for management of Mutual Funds for General and Non-Retail Investors and Mutual Funds for Institutional Investors and Private Funds

Notification of the Securities and Exchange Commission No. KorNor. 19/2540 (criteria, conditions and method of establishment of property fund for institutional investors)

Notification of Capital Market Supervisory Board No. TorNor. 73/2552 (criteria, conditions and method of establishment of funds for foreign investors)

Notification of Capital Market Supervisory Board No. TorNor. 38/2562 (criteria, conditions and method of establishment and management of infrastructure funds)

Notification of Capital Market Supervisory Board No. TorNor. 42/2555 (criteria, conditions and method of establishment and management of carbon funds)

Notification of the Securities and Exchange Commission No. KorNor. 22/2545 (criteria, conditions and method of management of venture capital funds)

Notification of the Office of the Securities and Exchange Commission No. KorJor. 15/2561 (Public Offer for Sale of Digital Tokens)

Notification of the Office of the Securities and Exchange Commission No. KorJor. 12/2562 (Private Placement Offer for Sale of Digital Tokens)

Notification of Capital Market Supervisory Board No. TorJor. 21/2562 (Regulations on Offer for Sale of Securities through Crowdfunding System)

Notification of Capital Market Supervisory Board No. TorJor. 1/2563 (Public Offer by a Private Limited Company Social Enterprise)

Notification of Capital Market Supervisory Board No. TorJor. 17/2563 (Private Placement Offer by SMEs)

SEC Guidelines on Issuance and Offer for Sale of Green Bond, Social Bond and Sustainability Bond

Other key market legislation

Derivatives Act B.E. 2546 (2003)

Notification of the Securities and Exchange Commission No. KorKor. 9/2552 (criteria of approval and approval to operate as trustee)

Notification of Capital Market Supervisory Board No. TorJor. 39/2559 (approval for sale of newly issued shares)

Notification of Capital Market Supervisory Board No. TorJor. 17/2561 (approval for sale of newly issued debt instruments)

Notification of Capital Market Supervisory Board No. TorJor. 49/2555 (issuance and sale of trust unit of Real Estate Investment Trust)

Notification of Capital Market Supervisory Board No. TorJor. 12/2558 (issuance and sale of units of Infrastructure Trust)

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Regulatory authorization

Who are the regulators?

The [Securities and Exchange Commission](#) (SEC) is the supervisory authority responsible for securities regulations. The remit of the SEC covers a wide range of securities-related activities and transactions in both the retail and wholesale market.

The [Stock Exchange of Thailand](#) (SET) is the supervisory authority which provides a platform for the sale and purchase of listed securities. The SET also acts as a clearing house and securities depository.

The [Bank of Thailand](#) (BOT) is the supervisory authority which regulates financial institutions, currency exchange, payment system, regulated non-banks, peer-to-peer lending and asset management.

The [Ministry of Finance](#) (MOF) oversees the SEC, the SET and the BOT. The MOF also regulates other specific finance activities, such as credit bureau and escrow agent.

The [Ministry of Commerce](#) (MOC) oversees the business registration and the business security registration.

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What are the authorization requirements and process?

Depending on the type of firm or the transaction, a firm or an individual must generally apply to obtain authorization from the relevant regulator and satisfy documentary requirements.

Certain activities are exempt from authorization. For instance, certain types of activity only require the satisfaction of documentary or information requirements before commencement or upon completion of a transaction. Activities exempt from authorization but which must satisfy documentary filing requirements include private placement offerings of debentures or shares, as regulated by regulations of Securities and Exchange Commission.

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What are the main ongoing compliance requirements?

There are two main forms of ongoing compliance requirements, namely merit-based regulations and disclosure-based regulations.

Merit-based regulations

Ongoing compliance obligations are determined depending on the type of transaction involved, for example corporate governance requirements apply to an offering of equity securities and credit rating requirements apply when a transaction involves debt instruments.

Examples of merit based regulations include the following.

THE CORPORATE GOVERNANCE CODE FOR LISTED COMPANIES

The latest version of these guidelines for listed companies was issued in 2017 and contains eight main practices of good governance. Although not mandatory, compliance with good corporate governance provides reassurance for investors.

THE INVESTMENT GOVERNANCE CODE FOR INSTITUTIONAL INVESTORS (I CODE)

Having considered the Stewardship Code of United Kingdom, the Securities and Exchange Commission (SEC) has issued this code which sets out seven key practices regarding investment governance of institutional investors. Similarly to the Corporate Governance Code for Listed Companies, this I CODE is not a mandatory guideline but has been encouraged by the SEC to be implemented to enhance credibility and investment environment.

NOTIFICATION OF THE SECURITIES AND EXCHANGE COMMISSION NO. KORJOR. 3/2560 - DETERMINATION OF UNTRUSTWORTHY CHARACTERISTICS OF COMPANY DIRECTORS AND EXECUTIVES

This Notification sets out criteria to determine the characteristics of untrustworthy directors.

CREDIT-RATING REQUIREMENTS

The issuance of bonds/debentures and bills or an investment unit of funds requires a credit rating which is required to be given by approved credit rating agencies. There are currently five approved credit-rating agencies under the laws of Thailand, being Standard & Poor's, Moody's, Fitch Ratings, Rating and Investment Information, Inc. and the Japan Credit Rating Agency, Ltd.

Disclosure-based regulations

Disclosure requirements depend on the nature of a transaction and the type of investors involved, for example disclosure requirements for private placement are more lenient than for initial public offerings. Disclosure of information about a company, the securities and investors are generally required. In some instances, approval must be obtained before commencement of a transaction and/or certain documentary requirements must be fulfilled upon completion.

Examples of disclosure based obligations include the following.

EQUITY SECURITIES

The offering of equity securities to the public requires disclosure on a strict basis. Disclosure is normally carried out by filing a form and preparing a prospectus which contains information regarding the issuer, details of securities, risks of investment.

BONDS / DEBENTURES

The offering of bonds / debentures requires disclosure of certain details, including the terms and conditions of the bonds / debentures, any transfer restrictions and the rights of holders of such debt instruments.

EXECUTIVE SUMMARY

The issuer is obliged to prepare an Executive Summary in the form required, which is attached to the subscription form for the securities. In addition, disclosures must be published on the website of the Securities and Exchange Commission and investors are encouraged to read it.

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What are the penalties for failure to be authorized?

A person undertaking a regulated activity without being authorized or exempt, commits a criminal offence and is liable to a fine and/or imprisonment.

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Regulated activities

What finance and investment activities require authorization?

Generally

A person must not carry on a regulated activity in Thailand unless authorized or exempted.

A financial activity requires regulatory authorization when it is identified as a regulated activity in relation to a regulated investment and it does not fall within any of the available exemptions.

- Regulated activities include, without limitation, activities such as accepting deposits, dealing in, managing, arranging and advising on investments, and establishing collective investment schemes.
- Regulated investments include, without limitation, equity instruments, debt instruments, options, futures and units in a collective investment scheme eg mutual funds, property funds, funds for foreign investors and infrastructure funds.

Consumer credit

Regulated consumer credit activities include, without limitation, the operation of an electronic system in relation to credit cards, personal loans, nano finance, PICO financing, payment gateway services, electronic money, clearing house services and the settlement of payment.

Unless exempted by law, these activities can only be offered by qualified companies who are licensed and supervised by the Ministry of Finance and the Bank of Thailand.

It might be worth noting that currently there is a draft Bill on the Regulated Financial Service Providers, e.g. hire purchasing, leasing and factoring. Once this bill become enacted as an act, certain consumer financial services will become regulated services.

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Are there any possible exemptions?

There are two types of exclusions available when regulated activities may be undertaken without authorization.

General exclusions

Certain persons may carry on a regulated activity provided such activity does not fall into a category of operating a securities business which requires authorization. For example, providing general advice on securities investment to foreign investors or providing advice to closed groups or institutional investors may be undertaken without authorization.

Specific exclusions

For each type of regulated activity there are a number of specific exemptions that could also apply, such as making introductions (that is, making arrangements under which clients can, under certain circumstances, be introduced to another person).

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Do any exchange controls or other restrictions on payments apply?

Yes.

The Bank of Thailand applies foreign exchange regulations to control and supervise cross-border transactions which involve foreign currencies, in particular if there will be repatriation of funds outside of Thailand.

Foreign currencies can be transferred into Thailand without limit. However, any person receiving foreign currencies from abroad is required to immediately sell such funds to an authorized bank or deposit such funds in a foreign currency account opened with an authorized bank within 360 days of receipt. Non-Thai residents and foreigners staying in Thailand for not more than three months, foreign embassies, and international organizations (including staff with diplomatic privileges) are exempt from this rule.

Antimoney laundering and tax considerations should also be taken into account.

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What are the rules around financial promotions?

Rules

Only a securities company licensed by the SEC can contact or solicit business from or otherwise provide advice on securities investment to investors or clients.

Exemptions

Exemptions include solicitation to institutional investors for investment outside of Thailand. For example, a non-Thai securities company licensed by a regulator which is an ordinary member of the International Organization of Securities Commissions can solicit business from Thai institutional investors to manage investments overseas without being licensed by the SEC.

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Entity establishment

What types of legal entity are generally used to undertake financial or investment activity?

Generally

The most common types of legal entities are private limited companies and public limited companies, both of which are body corporates with separate legal personality and limit the liability of their members to their shareholdings (ie shareholders are liable to pay for their shares but not the company's debts).

Limited companies can either be private (denoted by the suffix Co Ltd, Ltd or Limited) under the Civil and Commercial Code of Thailand (CCC) or public (denoted by the suffix PLC or Public Limited Company) under the CCC and the Public Limited Companies Act (PLCA). Only shares in public limited companies listed on an exchange can be publicly traded, subject to approval by the SEC.

Thai public limited companies can choose to list their shares with the Stock Exchange of Thailand (SET) or the Market for Alternative Investment (MAI) depending on its qualifications. Companies listed on the SET or the MAI are required to comply with the regulations of the SEC and the SET applicable to the main exchange or the alternative exchange, as the case may be. Foreigners may invest in listed securities using non-voting depository receipts (NVDRs) through Thai NVDR Co., Ltd. (the Thai NVDR), which is a subsidiary of the SET. The Thai NVDR was established in order to alleviate the constraints on foreign shareholding in Thai companies.

Funds

The most common type of funds used as investment vehicles for the private sector are mutual funds, private funds and provident funds.

Mutual fund

A mutual fund is a form of collective investment, pooled and managed by an asset management company holding a license from the SEC to undertake investment management business. A mutual fund is established as a separate legal entity from the asset management company. Mutual funds may be established for specific investment purposes and/or investors, for example property, infrastructure, carbon credit, retirement and collective investment schemes.

Private fund and provident fund

A private fund is formed of no more than 35 investors. It is managed by an asset management company licensed by the SEC to invest in securities or other assets according to an agreement with its investors. Unlike a mutual fund, a private fund does not have a separate legal personality. To protect the interests of its investors, the asset management company is required to appoint a private fund manager approved by the SEC. In addition, the assets of the private fund must be segregated from the portfolio of the asset management company and a custodian approved by the SEC to safeguard the assets of the private fund must be appointed. The custodian must also separate the assets of the private fund from the custodian's own proprietary portfolio.

A provident fund is a form of pooled fund to which an employer and its employees contribute as an incentive for additional savings for retirement or resignation. Regulations on provident funds are generally in line with those governing mutual and private funds, including asset segregation, asset custody, prevention of conflicts of interest, investment restrictions, asset valuation, information disclosure, investors' choice and unitization of members' rights. Provident funds are managed by a private fund manager who is approved by the SEC and appointed by the asset management company.

The only type of pension fund recognized under the laws of Thailand is the Government Pension Fund established under the Government Pension Fund Act B.E. 2539 (1996) for the purposes of ensuring benefits upon retirement, promoting awareness of saving and providing other welfare to members who are employed by government agencies.

Funds must be managed by an asset management company and such companies are generally required by law to be set up as either a private limited or public limited company and must be licensed by the SEC.

Generally, fund managers must be qualified individuals approved by the SEC.

Others

Other types of investment vehicles recognized under Thai law include:

- trusts for transactions in capital market, established under the Trust for Transactions in Capital Market Act, B.E. 2550 (2007) for the purposes of investing and managing investment eg institutional investors and high net worth trust funds, real estate investment trusts, exchange-traded funds and special purpose trusts (such trusts must be managed by a trustee licensed by the SEC);
- venture capital funds, which are required to be set up as a limited company or a public limited company established specifically to operate a venture capital business (such funds must be managed by a securities company licensed for venture capital management by the SEC); and
- crowdfunding platforms, established in order for small and medium enterprises to fundraise through funding portals approved by the SEC (investors can be retail investors (with an offer limit) or non-retail investors (without an offer limit)).

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Is it possible to conduct lending or investment business through a branch or establishment?

Yes.

In the context of banks, a branch of foreign commercial bank is considered as Commercial bank under the Financial Institution Act B.E. 2551 (2008). Therefore, if such branch is duly granted with approval from the BOT, it will be allowed to operate banking business in Thailand, including lending and investment activities.

In case of non-banks side, an establishment in Thailand (ie as a private limited company or public limited company) is able to conduct the lending or investment business in Thailand. If the entity in question is a foreign majority owned company, a foreign business license /certificate is needed to be granted by the MOC. Besides, if any lending and/or investment activities is by its natures regulated by the BOT (ie personal loan and nano finance) or the Fiscal Policy Office (FPO) under the MOF (ie pico finance) then approval from the BOT and/or FPO (as applicable) must be obtained.

For the purpose of the above:

- 'Commercial bank' means a public limited company approved to operate commercial bank business, a retail bank, a commercial bank which is a subsidiary of foreign commercial bank and a branch of foreign commercial bank being approved to operate commercial bank business in Thailand.
- '*Credit foncier* company' means a public limited company being approved to operate *credit fonder* business
- 'Finance company' means a public limited company approved to operate finance business.
- 'Financial institution' means a commercial bank, a finance company and a *credit foncier* company.
- 'Personal loan' means (i) lending, purchasing, discounting or rediscounting bills or any negotiable instruments to natural person, either with or without purpose to obtain goods or services; and (ii) lending with purpose of doing business. Currently, the personal loan regulated by BOT are the unsecured personal loan, ie without collateral, which shall include (i) and the financing on hire purchase or leasing of goods, except cars and motorcycles, that are not sold by the personal loan operator in ordinary course of business, except vehicles and (ii) the financing secured by vehicle plates. Nevertheless, the regulated personal loan shall exclude loans provided for (i) education, (ii) traveling in respect of overseas employment, (iii) medical treatment, (iv) staff welfare where the employer has signed contract with the personal loan operator and (v) others as prescribed by BOT.
- 'Nano finance' means lending, purchasing, discounting or rediscounting bills or any negotiable instruments, hire-purchase, leasing to natural person with the purpose of doing business without assets or property as collateral. Currently, the regulated nano finance is defined as nano finance with the purpose to do business with the lending procedure flexible in line with the criteria of debtors' group, eg start-up business. The credit limit for each debtor must not exceed THB 100,000 with the credit period as agreed between debtor and nano finance operator. Nevertheless, regulated nano finance shall exclude (i) hire-purchase and sale and lease back of car and motorcycles, (ii) car for cash and motorcycles for cash, (iii) hire-purchase and lease of goods that are sold by the nano finance operators in their ordinary course of business, (iv) traveling loan in respect of overseas employment and (v) others as further prescribed by BOT.

- Pico Finance which is regulated means lending made to a natural person either with or without assets or property as collateral, at the province on which a head office of the pico finance operator is located, and calculated the maximum interest, profits from lending, fine, fees and other expenses not exceeding the interest rate permissible under CCC. The regulated pico finance shall exclude (i) traveling loan in respect of overseas employment, (ii) loan granted as staff welfare where the employer has signed contract with the pico operator and (iii) others as prescribed by FPO.

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FinTech

FinTech products and uses

What are the most common technology products and FinTech applications used or being developed in the finance and investment marketplace?

Peer-to-peer funding platforms and marketplace lending

The BOT is the authority that supervises and regulates financial business and activities in Thailand. Currently, Peer-to-peer lending and consumer lending eg personal loan, nano finance and pico finance have been regulated in Thailand. The BOT is responsible for supervising the peer-to-peer lending activity whereby it requires the prospective peer-to-peer operator to participate in the BOT's Regulatory Sandbox and be licensed before operating the peer-to-peer business.

Please see [Electronic payments platforms and regulation of peer-to-peer lenders](#).

Blockchain, smart contracts and cryptocurrencies

The BOT has implemented the FinTech regulatory sandbox (BOT Sandbox) which will enable financial institutions, as well as FinTech companies, to experiment with and develop innovative financial products or services within a well-defined space and duration, under the BOT's supervision.

The main criteria is that the products or services in questions must be the products or services which are under supervision of BOT. Otherwise, it could not participate in the BOT Sandbox. Currently, the financial services to be tested in the BOT Sandbox must be (i) relevant to infrastructure or centralised standard or (ii) required by laws to participate in the BOT Sandbox.

According to the practice guidance concerning the FinTech regulatory sandbox issued by the BOT on 15 March 2019, the financial products or services which can enter into the Sandbox must have the following criteria:

- being financial products / services regulated by the BOT;
- being financial products / services or FinTech innovation using new technology – it could be (i) a new innovation, (ii) different from currently available financial products or services in Thailand or (iii) an innovation which applies new technology to improve efficiency of existing products/services; and
- having any of the following qualifications;
 - being financial products / services which could be developed to be infrastructure or centralised standard for Thai financial sectors which shall be tested together by financial service providers; or
 - being required to participate in the Sandbox by virtue of laws or relevant supervising criteria (e.g. the regulated peer-to-peer lending).

However, if the services are not qualified under the criteria above, it could be apply to be tested under the Own Sandbox scheme. The Own Sandbox is a separate and independent sandbox of each business operator but still under the monitor of BOT. Quarter report on progress of the Own Sandbox is required to be submitted to BOT.

Several FinTech companies have participated and are currently participating in the BOT Sandbox. According to the publication of BOT, technologies tested under the BOT Sandbox are for example Standardized QR Code, Biometrics (ie facial and iris recognition), Blockchain, Machine Learning and Standardized API, etc.

Initial coin offerings and token-based products

By virtue of the Emergency Decree on Digital Asset Business B.E. 2561 (2018), since 14 May 2018, the Initial Coin Offerings (ICOs) as well as the operation of Digital Assets Business in Thailand have become the regulated activity under the supervision of the SEC. Cryptocurrencies and Digital Tokens are considered as Digital Assets thereunder.

INITIAL COIN OFFERINGS (ICOS)

The ICOs under the supervision of the SEC refer to the offering of regulated Digital Tokens in Thailand. Basically, an ICO issuer must be a private or public limited company licensed by the SEC and must offer the ICO through the ICO portals licensed by the SEC. Currently, while three ICO portals are licensed by the SEC, no ICO issuer has been licensed by the SEC.

Further, the SEC has prescribed the following types of qualified investors being able to subscribe for the ICO:

- Institutional Investors or Ultra High Net Worth (UHNW) Investors;
- Venture Capital or Private Equity; and
- Other investors who are subject to the capped of offering value as prescribed by the SEC.

Similarly to the securities offerings, a disclosure-based regulation theme is applicable to the ICO whereby a prospectus is required to be submitted to the SEC and effective before the ICO can be made. Nonetheless, certain types of offerings are exempted from being supervised by the SEC (e.g. an offering of Digital Tokens by the Bank of Thailand) or from the disclosure and prospectus requirements (e.g. a private placement of Digital Tokens to limited types of investors).

OPERATION OF DIGITAL ASSETS BUSINESS

The Emergency Decree on Digital Asset Business B.E. 2561 (2018) categorised three types of business operation which are relevant to the digital assets; being (i) Digital Asset Exchange, (ii) Digital Asset Broker and (iii) Digital Asset Dealer. These three businesses are subject to licensing requirements of the SEC prior to operating its digital assets-related business in Thailand.

To prevent the illegal use of digital assets, the SEC requires the secondary trading or exchange of the digital tokens to be done only through the licensed Digital Asset operators. Besides, in case where the ICO issuer and / or the Digital Asset operators receives cryptocurrencies as remuneration or part of transaction, only the cryptocurrencies tradeable or exchangeable at the licensed Digital Asset operators can be accepted.

Artificial intelligence and robo advisory systems

Currently, there are no particular laws that are specifically intended to apply to the artificial intelligence (AI) and robo advisory systems; and there is no regulatory sandbox exclusively dedicated to AI and robo advisory systems.

However, the SEC has supported the use of technology especially AI and robo advisory systems in the context of securities. The SEC therefore has cooperated with private sectors to opening [an official website](#) under the project named 'Five Steps to Investment with Confidence' which is so-called 'Wealth Advice for All'. This project is aimed to be an introductory platform for investors to easily connect with wealth advisors as licensed by the SEC with less associated investment costs and to advocate long-term financial well-being of Thai nationals.

Certain licensed operators are implementing AI and robo advisory systems when providing investment consultation services. To be qualified as a licensed wealth advisor, the operator must be licensed by the SEC to provide securities/derivatives business and shall also be equipped with reliable systems and personnel in response to the five key concerns of the SEC i.e.:

- exploring and understanding customers;
- constructing an investment portfolio;
- implementing the portfolio according to the asset allocation plan;

- monitoring and rebalancing the portfolio; and
- providing consolidated reports for clients' review.

Please see [FinTech products and uses – particular rules](#).

Data analysis and cloud computing

Currently, there are no particular laws that are specifically intended to apply to the data analysis and cloud computing market; and there is no regulatory sandbox exclusively dedicated to data analysis and cloud computing activities.

There is no specific legal requirement for the use of cloud services. However, a service provider of electronic transactions under the Electronic Transaction Act B.E. 2544 (2001) who opts in to use the cloud services are encouraged to follow the Notification of the Electronic Transaction Committee re: Guideline on Application of Cloud Services B.E. 2562 (2019) (Cloud Guideline) which sets out the fundamental criteria and recommendations when using the cloud services regardless of whether the cloud services are provided by third parties. Initially, the Cloud Guideline guides on key considerations in several aspects which should be factored when using the cloud services, eg policies and practices of electronic transactions service providers, efficiency of cloud services, security, data management and personal data protection.

Please see [FinTech products and uses – particular rules](#).

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Are there any restrictions, specific laws, regulations or procedures that apply to FinTech products?

General financial regulatory regime

Due to the wide range of FinTech products in the market, the regulatory authorities with responsibility will depend on the type of FinTech products involved. Currently, there are four main supervisory authorities under which FinTech activities or products may be caught:

- the Bank of Thailand (BOT);
- the Securities and Exchange Commission of Thailand (SEC);
- the Stock Exchange of Thailand (SET); and
- the Office of Insurance Commission (OIC); and
- the Board of Investment of Thailand (BOI).

GENERAL

A person cannot carry on a restricted / regulated activity in Thailand unless authorization or exemption is granted (known as the general prohibition). Most financial activity requires regulatory authorization when:

- it is identified as a specified activity in relation to a specified investment;
- it is carried on by way of business in Thailand; and
- it does not fall within any of the available exemptions.

Where FinTech products or applications involve financial activities which require regulatory authorization, the firms providing such products or applications must be authorized by the relevant supervisory authority.

FINTECH REGULATORY SANDBOX

Please see [FinTech products and uses – common technology products](#) for the FinTech Regulatory Sandbox offered by the Bank of Thailand.

The SEC set up the FinTech Department and Data Management and Analytics Department (effective from 1 January 2017) to work on a strategic plan concerning innovation in capital markets.

REGULATORY DEVELOPMENTS ON INVESTMENT PLATFORMS

A draft FinTech Act is currently under review by the relevant authorities and stakeholders. On 4 September 2017, the public hearing of the draft FinTech Act emphasized its importance and revised it to reflect comments raised by parties who may be affected by its enactment.

Electronic payments platforms and regulation of peer-to-peer lenders

ELECTRONIC PAYMENT PLATFORMS

The Payment System Act B.E. 2560 (2017) (PSA) has been enacted to regulate electronic payment businesses in Thailand. The PSA has categorised three types of payment-related businesses under the supervision of the BOT as follows:

- **Highly Important Payment Systems:** These are payment systems that are a principal infrastructure of the country whose problems or disruptions would be likely to affect members systemically, and handle large value fund transfers or used for clearing or settlement between members; including the payment systems operated by the BOT which are the inter-bank large value funds transfer systems (BAHTNET) and Imaged Cheque Clearing and Archive System (ICAS). In addition, the Minister of Finance is empowered to designate other payment systems to be the highly important payment systems.
- **Designated Payment Systems:** These are payment systems that (i) are the center or network between system users for handling funds transfer, clearing or settlement eg retail funds transfer systems, payment card network, settlement system, etc, and or (ii) may affect public interests, public confidence or stability and security of the payment systems.
- **Designated Payment Services:** The regulated payment services are (i) credit card, debit card, or ATM card services, (ii) electronic money services, (iii) acceptance of electronic payment for and on behalf of others, (iv) electronic money transfer services, and (v) other payment services which may affect payment systems or public interests.

In order to legally operate an electronic payment business in Thailand, prospective operators (either natural or juristic persons) need to comply with applicable requirements before operating permitted electronic payment activities. The applicable requirements depend on the types of electronic payment activities to be conducted but would be either to register or to obtain a license from the BOT. Further details regarding regulation of electronic payment platforms can be found on the BOT website.

PEER-TO-PEER LENDERS

Due to the enactment of the MOF Notification re Business Subject to Approval to Clause 5 of the Revolutionary Council Decree 58 (Regulated Peer-to-Peer Lending Platform Business) and the BOT Notification No. SorNorSor. 4/2562 re Regulations, Procedures and Conditions for Conducting Peer-to-Peer Lending Business through Electronic System/Platform (BOT Notification re Peer-to-Peer Lending), the peer-to-peer lending is a regulated activity in Thailand.

The BOT has been authorised to be an in-charge authority for:

- receiving an application form;
- specifying applicable regulations; and
- requiring a business operator to apply for an application to the BOT's Regulatory Sandbox.

According to the BOT Notification re Peer-to-Peer Lending, the BOT requires an operator who wishes to conduct the peer-to-peer lending business through electronic system/platform to:

- make an individual consultation to the BOT;
- participate in the BOT's Regulatory Sandbox until reaching successful outcome; and
- apply for the application of the peer-to-peer lending business through electronic system/platform prior to legally operate the peer-to-peer lending business through electronic system/platform in Thailand.

Please note the operator must be a company incorporated in Thailand with the registered and paid-up capital of at least THB5 million (including shareholder's equity) and have a Thai shareholder holding not less than 75% of total shares with the right to vote.

Scope of business activity of peer-to-peer lending business through electronic system/platform is being an online market place or matchmaker whereby a loan agreement between a lender and a natural person borrower will be made through electronic system /platform and the loan must be granted in THB currency.

The maximum of the total amount of loan granted by each lender through any peer-to-peer ending operators is not exceeding THB500,000 per lender within any 12-month period unless such lender that is a qualified institutional investor, a private equity, a venture capital or a specific investor. The interest chargeable is not exceeding 15% per annum.

Apart from the above, the general principle for monetary lending under the Civil and Commercial Code of Thailand (CCC) is that borrowing of money in amounts above THB2,000 must be evidenced in writing and signed by the borrower. If such formalities are not complied with, a claim cannot be made against the other party to the transaction. According to the Electronic Transaction Act B.E. 2544, such evidence can be in an electronic form, since electronic data and signatures are enforceable if such electronic data is accessible and usable for subsequent reference without its meaning being altered and if the electronic signatures are made using a reliable method to identify the signatories.

Regulation of payment services

Please see [Electronic payments platforms and regulation of peer-to-peer lenders](#) above.

Application of data protection and consumer laws

DATA PROTECTION LAW

The Personal Data Protection Act B.E. 2562 (2019) (PDPA) has recently been enacted on 28 May 2019. Due to the one-year grace period, the PDPA will fully be enforceable on 28 May 2020. The PDPA signals a new dawn in the handling of personal data in Thailand because prior to the PDPA, Thailand did not have an overarching law governing the protection of personally identifiable information. The collection, use and disclosure of personal data in Thailand were regulated to an extent by a patchwork of laws including the Constitution, sector-specific legislation and various self-regulatory codes. The PDPA is mainly similar to the EU General Data Protection Regulation regime, bringing personal data protection law in Thailand in line with other jurisdictions.

The PDPA introduces two key roles in collecting, processing and transfer of personal data. The Personal Data Administrator (Data Administrator) will have overall responsibility to determine and control the use of personal data. The Personal Data Processor (Data Processor) will be responsible for using, disclosing or processing the data on behalf of, or in accordance with, the instructions of a Data Administrator.

Affirmative consent must be obtained from the data subject in order for Data Administrators to legitimately collect personal data. Data Administrators must obtain consent for any use or disclosure of data that is beyond the original collection request. There are however limited circumstances in which Data Administrators may be exempt from obtaining the data subject's consent.

The PDPA applies to all organisations that collect, use or disclose personal data in Thailand. This is regardless of whether they are formed or recognised under Thai law; and whether they have residence, office or place of business in Thailand. Cross-border transfer of personal data outside of Thailand is prohibited, unless the recipient country's data protection standard is equivalent or higher than the PDPA but limited exceptions are available.

CONSUMER LAW

The Consumer Protection Act B.E. 2522 (CPA) has been enforced with an aim to provide protection for consumers who buy or obtain services or are offered goods or services. The CPA applies to business operators who are:

- sellers, manufacturers or importers of goods or are purchasers of such goods for re-sale; and
- service providers, including those who operate an advertising business.

The CPA provides protection for consumers in several aspects eg advertisement, unsafe goods, labelling and contractual requirements etc. To ensure the consumer protection, the Consumer Case Procedure Act B.E. 2551 (2008) has been enacted to provide specific procedural requirements in relation to a consumer litigation.

Money laundering regulations

In addition to commercial banks and other governmental authorities, certain other business operators are subject to anti-money laundering laws in Thailand. According to the Anti-Money Laundering Act B.E. 2542 (1999) (AMLA) and subordinated regulations, certain business operators are subject to the requirements under AMLA to:

- report required transactions (e.g. cash transactions with amounts exceeding specified thresholds);
- procure know-your-customer (KYC) checks; and
- arrange customer due diligence.

Apart from financial institutions (eg commercial banks, finance companies, credit foncier companies, securities companies, insurance companies and operators of regulated payment systems or services, etc.), certain non-financial institution business operators covered by the AMLA include:

- non-financial institutions providing advice or acting as advisors in transactions relating to the investment or movement of funds under the law governing securities and the stock exchange;
- operators trading precious stones, diamonds, gems, gold, or ornaments decorated with precious stones, diamonds, gems or gold;
- operators trading in or providing the hire-purchase of cars;
- operators acting as brokers or agents in respect of the purchase or sale of immovable property;
- operators trading antiques under laws governing the sale by auction and trading of antiques;
- operators providing personal loans under the supervision of businesses that are not financial institutions or who are not caught by the Ministry of Finance's notification requirements in respect of personal loan businesses or who do not otherwise fall under the supervision of the laws governing financial institution businesses;
- operators transacting in electronic money that are not financial institutions caught by the Ministry of Finance's notification requirements in respect of electronic money or that are not otherwise subject to the laws governing financial institution businesses;
- non-financial institution operators conducting credit card business;
- electronic payment operators governed by laws relating to the supervision of electronic payment service business; and
- non-financial institution operators carrying out currency exchange activities as specified in the relevant ministerial regulation.

The Anti-Money Laundering Office is the supervisory authority of the AMLA.

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What type of funding arrangements and incentives are available to FinTech businesses?

Early stage

SEED INVESTMENT

Initial investment in FinTech businesses may be provided by family and friends of the founders and other high-net-worth individuals (often known as business angels) in return for an equity stake. Such seed investment is often used to fund the establishment and early growth of the business before larger investment is available. The investing individuals may also provide know-how and expertise to assist in the company's development. The seed investors would typically not require the same controls over the business as, for example, venture capital (VC) providers.

CROWDFUNDING

Crowdfunding platforms are currently available under the supervision of the Thai Securities and Exchange Commission (SEC). The funding portal used for screening the offering company, disclosing information and educating investors must be approved by the SEC. Moreover, the approved funding portal must also categorize its members as either retail investors or non-retail investors (eg VC, private equity trust and qualified investors). Retail investors will be subject to a limit on investment while non-retail investors will not be subject to such a limit.

Currently, both equity and debt crowdfunding are permitted in Thailand.

Crowdfunding offers a large number of private investors an opportunity to make small-scale investments in early-stage businesses to which they may otherwise not have had access.

ACCELERATORS

There are various incubators or accelerators in the Thai market which offer support, facilities and funding for startups, often in return for an equity stake.

Venture capital and debt

VC funding is a type of equity investment usually targeted at early-stage FinTech companies with an established business and some trading history. VC provides a viable alternative to traditional lending given that the business is unlikely to have the tangible asset base or long track record needed to attract traditional debt funding from financial institutions.

Corporate venture capital (CVC) is a type of VC and involves an equity investment by a corporate fund, examples of which include Beacon Venture Capital (being a CVC vehicle of Kasikorn Bank PLC) or Digital Ventures (being a CVC vehicle of Siam Commercial Bank). Both CVCs are targeting FinTech startups. The benefit of having a CVC as an investor for a FinTech startup is that the fund is able to share its knowledge and expertise of the FinTech sector with the company and act as an advisor.

VC debt is not available in the funding market as the corporate laws in Thailand do not allow conversion of debt to equity or the issuance of convertible debt instruments by a private limited company (which is the form of business vehicle commonly used by startups in Thailand). However, we have been working with the relevant authorities to amend the relevant laws and regulations to facilitate the funding market for startups in Thailand, including amendments to allow debt-to-equity conversion and the issuance of convertible debt instruments by private limited companies in Thailand.

In addition, proposed amendments to corporate law to promote and facilitate the funding market for startups include changes to:

- allow the offer of shares in a private limited company to employees / directors under an Employee Stock Option Plan (ESOP) and creditors under debt-to-equity conversion programs or convertible debt instruments;
- enable the rights attached to preference shares to be amended by special resolution of shareholders; and
- enable a private limited company to buy back its shares, subject to certain requirements and criteria being met.

Warehouse and platform funding

The SEC is currently actively monitoring the SEC FinTech regulatory sandbox relating to investment advisors, private funds, clearing and settlement activities and electronic trading platforms (ETP).

In addition to the FinTech regulatory sandbox, there is also a know-your-customer (KYC) regulatory sandbox which enables temporary rules to apply to business activities which do not need to be supervised by the FinTech regulatory sandbox. Temporary rules for Limited Brokerage Dealing and Underwriting (LBDU) are now also available.

To participate in the SEC FinTech regulatory sandbox, FinTech companies must fulfil the requirements set out in relevant SEC regulations. Generally, to enter into the FinTech regulatory sandbox, businesses need to:

- involve innovation in financial services;
- be operationally ready in terms of capital, work systems, human resources, risk management processes and customer contact processes; and
- have an exit strategy.

Please see [FinTech products and uses – particular rules](#).

Senior bank debt and capital markets funding

SENIOR BANK DEBT

Once a FinTech company is established and has a track record, bank debt becomes a more viable source of funding, either on a secured or unsecured basis depending on the creditworthiness and asset base of the business. In contrast to capital markets funding which is often covenant-lite, bank funding will generally involve the imposition of financial covenants and controls that will apply over the life of the facility. Bank finance may be particularly important for working capital, overdraft, accounts management and general liquidity purposes.

CAPITAL MARKETS FUNDING

Thailand has both debt and equity capital markets which are accessible to businesses (usually of a certain size).

Raising finance by way of an Initial Public Offering (IPO) can be done in the SET and MAI, depending on applicable criteria and requirements. However, IPOs are not a popular funding arrangement for FinTech companies because FinTech is an emerging sector with numerous applicable regulations and with incentives which are less favorable when compared to other jurisdictions in the region such as the Singapore market.

Incentives and reliefs

Thai Revenue Department (RD) has continuously provided tax incentives and reliefs to qualified startups and SMEs including its investors, e.g. VC and angel investors. The conditions and qualifications of eligible person/entities under the tax schemes granted are amended periodically.

In respect of startup itself, the key conditions and qualifications to be eligible for 5-year corporate income tax exemption are, e.g. being incorporated during the prescribed period, having at least THB5 million of registered capital, having the income not exceeding THB30 million in the accounting year whereby 80% of which is generated from the operating targeted business, and applying for an approval with the RD.

Further to the foregoing, the startup must operate the targeted business as specified by the National Science and Technology Development Agency, including businesses in the following industries:

- food and agriculture;
- energy saving, renewable energy and clean energy;
- biotechnology;
- medical and public health;
- tourism, services and creative economic;
- advanced materials;
- textiles, fabrics and accessories;
- vehicles and auto parts;
- electronics, computers, software and information services; and
- research and innovation.

VC and angel investors are also subject to certain requirements in order to claim for tax privileges e.g. participating in an investment during the promoted period, and retaining the investment within the minimum period, etc.

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Portfolio sales

Loan transfers and portfolio sales

What are common ways of buying and selling loans?

Buying and selling loans is very common.

A loan can be sold on an individual basis or packaged up with other loans and sold as a portfolio pursuant to overarching terms.

The most common ways of selling loans are:

- **Novation** – A novation is a full legal transfer of the party's rights and obligations. It is a tripartite arrangement between the existing parties and the transferee and results in a fresh contract being formed between the continuing party and the transferee and the transferor being released from its obligations.
- **Assignment** – An assignment is a transfer of rights only, not obligations. Subject to any contractual restrictions, assignment can be done without the consent of the debtor. However, the assignee is able to claim such assignment against the debtor only if such transfer is notified to the debtor in writing; and if the debtor consents in writing to such transfer, the debtor will not be able to use any defense it has over the assignor against the assignee.

Under Thai law, the security will not automatically transfer with the loan which it secures. An amendment to the security agreement or a new security agreement (as the case may be) must be done to secure the transferred loan.

Please note that there is no specific provision on sub-participation under Thai law. However, commercial banks will be subject to requirements and criteria under the risk participation regulations of the Bank of Thailand.

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What are the main considerations when transferring a loan and related security?

There are a number of issues to consider before transferring a loan or portfolio of loans. These issues are often covered as part of a due diligence exercise by the seller's legal advisors. Some of the key considerations include:

- **confidentiality** – whether the seller of the loan is allowed to disclose information relating to the loan to a potential purchaser;
- **data protection** – whether there is any personal data or other restricted information in the loan that should not be disclosed to a potential purchaser;
- **lender eligibility** – whether there are any restrictions around the type of entity to which the loan can be transferred;
- **undrawn commitments** – whether there are any continuing obligations for further funding or other material obligations on the part of the lender that may fall on the transferee or reduce claims made by the transferee;
- **transfer mechanics** – whether there are any steps that need to be taken to transfer the loan in accordance with its terms; and
- **consent** – whether a transfer requires the consent or notification of any other parties.

An asset management company approved by the Bank of Thailand for the purpose of transferring assets (ie non-performing assets) from financial institutions will benefit from, for example, exemptions on (i) certain fees and taxes and (ii) requirements to provide notices of transfer.

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Projects

Financing / investing in energy / infrastructure

To what extent are energy and infrastructure assets publicly or privately owned?

Generally

The ownership of energy and infrastructure assets in Thailand varies according to the asset class. The main asset classes are usually considered to be:

- economic infrastructure (energy, aviation, rail, telecommunications, water, roads and waste); and
- social infrastructure (education, health and justice/prisons, housing).

Key sectors are considered below.

Energy

GAS

PTT Public Company Limited (PTT) is a state-owned listed oil and gas company. It owns gas pipelines and LPG terminals and engages in the production of oil and gas as well as petrochemical products. PTT has many subsidiaries investing in various sectors. Private participation is allowed in the gas sector through receipt of concessions from the government. There are encumbrances on investment in certain areas e.g. LPG in terms of strict criteria and conditions for investment. Therefore, few private investors engage in such business sector.

There are six main companies engaging in oil refinery business in Thailand:

- Thai Oil Public Limited Company;
- PTT Global Chemical Public Company Limited;
- Star Petroleum Refining Public Company Limited;
- Bangchak Petroleum Public Company Limited;
- IRPC Public Company Limited; and
- Esso (Thailand) Public Company Limited.

ELECTRICITY

Three state enterprises manage the electricity industry in Thailand. The Electricity Generating Authority of Thailand (EGAT) is responsible for producing, generating and transmitting electricity. The Metropolitan Electricity Authority (MEA) and the Provincial Electricity Authority (PEA) deal with distribution of electricity. Private sector entities are able to participate in the electricity business as electricity producer in accordance with government policy.

There are three main types of private electricity producer:

- Independent Power Producer (IPP);
- Small Power Producer (SPP); and
- Very Small Power Producer (VSPP).

Telecoms infrastructure

The National Broadcasting and Telecommunication Commission (NBTC) is an independent state organization empowering to assign the frequencies and to regulate the broadcasting and telecommunications businesses with regard to the utmost public benefit. Private entities are able to take part in telecommunication business through an auction and licensing process. Qualified candidates need to accept terms and conditions specified by NBTC before entering into an auction to engage in telecoms infrastructure. The major telecommunications operators are True Move, DTAC and AIS.

TOT Public Limited Company (TOT) and CAT Telecom Public Limited Company (CAT) operate national telecommunications and provide international telecommunication services. Both are Thai state-owned telecommunications companies.

Transport infrastructure

URBAN TRANSPORT

Currently, there are three urban rail transport systems operating in Thailand and connecting Bangkok with outer Bangkok and urban areas; being the Bangkok Mass Transit System (BTS), Metropolitan Rapid Transit (MRT) and Airport Rail Link (ARL).

- Bangkok Mass Transit System Public Limited Company (BTSC) built and operated the BTS which was entirely funded by private sectors. The BTSC's 30-year concession awarded by the Bangkok Metropolitan Authority (BMA) ends in 2029, following which (subject to renewal), the BTS business will be transferred to the BMA because the concession is in the form of a Build Operate Transfer (BOT) contract.
- The MRT is a cooperation between public and private sectors. The Mass Rapid Transit Authority of Thailand (MRTA) as a project owner built the infrastructure and offered the operating concession to the Bangkok Expressway and Metro Public Limited Company (BEM).
- The ARL is entirely owned by State Railway of Thailand (SRT) and operated by State Railway of Thailand Electrified Train Company Limited which is now a state enterprise under the supervision of the Ministry of Transportation.
- Additional rail and urban transport systems are currently under working progress whereby the main project owner is MRTA.

NATIONAL RAIL

Double-track rail and high speed railway projects are currently under construction or negotiation process. SRT is responsible for study and procurement of both projects. High speed railway projects which have been active are:

- Bangkok – Nakhon Ratchasima;
- Nakhon Ratchasima – Nong Khai;
- High-speed rail linking three airports;
- U-Tapao – Rayong;
- Bangkok – Chiang Mai; and
- Bangkok – Padang Besar.

Certain routes of high speed railway project have the cooperation from foreign countries eg Italy, China and Japan in terms of technology transfer. Private sector is able to participate in the investment on both projects in the form of public-private partnerships scheme (PPP) which is usually made by auction process.

ROADS, BRIDGES AND TUNNELS

Roads

The Department of Highways (DOH), an authority under the supervision of Ministry of Transportation, is responsible for research and development, construction, expansion, maintenance and renovation of the motorways, national highways and concession highways. Rural and local highways are under the responsibility of the Department of Rural Highways (DORH) and local authorities, respectively. The Expressway Authority of Thailand is responsible for expressway whereby BEM receives the concession to be an operator. Don Muang Tollway Public Limited Company won an auction to manage and collect toll revenues of the Don Muang Tollway which is the highway under the supervision of DOH. Private sector participates in the roads investment by procurement process of sub-contracts, eg a construction contract, a system installation contract or a design, operation and maintenance contract.

Bridges and tunnels

The sub-divisions of the DOH and DORH called the Bureaus of Bridge Construction are responsible for construction of bridges and tunnels over and around a highway under its responsibility. Unless local competent authorities are responsible for design, construction and maintenance of bridges and tunnels in the area of its responsibility eg Department of Public Work of Bangkok is responsible for construction of bridges and tunnels in certain areas of Bangkok.

Aviation

Airport of Thailand Public Limited Company (a majority state owned company) owns and operates main airports in Thailand. Private ownership on airports, and aircrafts is recognized in Thailand as long as relevant licenses are obtained. All models are heavily regulated by government and the Civil Aviation Authority of Thailand which is the aviation regulator in Thailand.

Port

Port Authority of Thailand (PAT) is the supervisory authority of ports in Thailand. Six main ports are under the regulation of PAT which assigns the management. Private can invest in port business eg sea port business by licensing process.

Other infrastructure

EASTERN ECONOMIC CORRIDOR (EEC)

The EEC is a developing economic zone created with an aim:

- to increase and improve infrastructure such as rails, deep seaports, and aircraft;
- to create business, industrial clusters, and innovation hubs; and
- to benefit tourism and employment.

The EEC region preliminarily includes areas in three provinces in Thailand, i.e. Chonburi Province, Chachoengsao Province, and Rayong Province.

Investment privileges and benefits which available to qualified investors of the EEC regime relate to tax in terms of corporate income tax and import duties, land ownership permission, and visa and work permits for non-Thai nationals. Plus, financial assistance for purposes of innovative R&D or experts development of the targeted business could also be obtained.

SOCIAL INFRASTRUCTURE (SCHOOLS, HOSPITALS, EMERGENCY SERVICES CENTERS / PRISONS)

Private participation is permitted in social infrastructure area in order to assist public sector providing such infrastructure not to directly earn profits.

Education

A licensed person or entity is able to establish a school or university. Specific requirements may be applied depending on each type of entities established eg allocation of profits to reserved funds of school, maintenance of Thai majority committees of university and requirement of notification to supervisory authorities on an incident-based basis.

Hospitals

A license is mandatory in order to operate sanatorium. Regulatory compliance is also of important for this type of business operation.

DEFENSE

Typically, defense assets are owned by the public sector.

WASTE

The Pollution Control Department (PCD) is the main supervisory authority of waste management in Thailand. PCD then hires private sector to procure waste collection and waste management.

WATER

The authority in charge of water industry in Thailand is Metropolitan Waterworks Authority and Provincial Waterworks Authority. East Water Resources Development and Management Public Limited Company (EW) was set up for privatization of water industry. EW handles development of water resources for both industrial and consuming purpose for the eastern part of Thailand to support the plan to create main industrial district of Thailand. Other private companies also take part in investment on water infrastructure eg water-supply projects. Waste water management is under the responsibility of Public Works Department. Establishment of factory dealing with waste water treatment by private companies is allowed provided that license or approval from relevant authorities are duly obtained.

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Are there special rules for investing in energy and infrastructure?

Generally

Generally, investment in the infrastructure business takes the form of public-private partnerships (PPP). The main law is therefore the Public-Private Partnership Act B.E. 2562 (2019) (PPP Act). Where public government authorities procure private sectors, the Government Procurement and Supplies Management Act B.E. 2560 (2017) (GPSMA) is also relevant.

PPP Act generally sets out:

- the PPP Committee to regulate and supervise the private investment on State undertaking;
- eligible categories of infrastructure projects and public services to be invested under the PPP Act:
 - roads, highways, special ways and land-transportation;
 - trains, electric trains and other rail-transportation;
 - airports and air-transportation;
 - ports and water-transportation;
 - water management, irrigation, waterworks and wastewater;
 - energy works;
 - telecommunications and general communications;
 - hospitals and public health;
 - schools and education;
 - housing and facilities for low or medium wage earners, the elderly, underprivileged or disabled;
 - exhibition centres and conference centres; and
 - other projects as to be announced by Royal Decree.
- the investment threshold and applicable rules and procedures being; a project with a value from THB5 billion is subject to the rules and procedures under the PPP Act while others with a value less than THB5 billion is subject to rules and procedures of the PPP Committee; and
- criteria and process of the joint investment between the authority which is a project owner and private sector e.g. feasibility study of the project, selection of private party and on-going supervision of the project, etc.

GPSMA sets out methods and process of procurement, consideration, criteria for selection of offer and forms of contract of procurement.

Foreign Direct Investment (FDI) in infrastructure sectors is not strictly prohibited under Thai law. However, a foreign business license (FBL) or foreign business certificate (FBC) pursuant to the Foreign Business Act B.E. 2542 (1999) (FBA) will normally be required if an operating company is considered a foreigner (being a foreign established entity or a Thai established entity with at least 50% of its shares are owned by foreign natural person and/or foreign entities) unless a foreigner invests in construction of infrastructure for public services in the sphere of public utilities or transportation which requires special apparatuses, machines, technology or expertise with the minimum capital of THB500 million or upwards, FBL or FBC is not required.

Under the Investment Promotion Act B.E. 2520 (1977) (IPA), if the operating business is within the scope of promoted business activities, such company may be eligible for tax and/or non-tax privileges eg right to own a land because it is normally prohibited for a foreigner to have land ownership under Thai laws.

Compliance with Factory Act B.E. 2535 (1992) and Town Planning Act B.E. 2518 (1975) and its subordinated laws is also of importance as the violation of having the license to operate a factory or procedures to take before construction of building could result in revocation of premises as well as civil and criminal sanctions.

Other special requirements could be specified in the term of reference of the project in question or contracts between private investors and public authorities.

Please note that there are ministerial regulations and other subordinated laws, e.g. notification or order, issued pursuant to the act.

Energy

The specific laws and/or regulations regarding the investment in energy sector include:

- Energy Industry Act B.E. 2550 (2007) empowers the Energy Regulatory Commission as the supervisory authority for operation of energy industry business and sets out provisions regarding process for application of a license to operate the industry business and details of energy business operation e.g. standards and safety.
- Petroleum Act B.E. 2514 (1971) empowers the Petroleum Commission as the supervisory authority for energy business operation and sets out details of concession to operate the petroleum business and the operation of the petroleum business e.g. sale and disposal and payment of governmental fees.
- Fuel Trade Act B.E. 2543 (2000) sets out regulatory provisions regarding the trading, transportation and quality of fuel as well as preventive and mitigation measures for fuel shortage.
- Fuel Control Act B.E. 2542 (1999) empowers the Fuel Control Commission as the supervisory authority for business operation concerning with possession of fuel, fuel station, fuel storage and transportation of fuel as well as sets out details and requirement of such business operators.
- Promotion of Energy Conservation Act B.E. 2535 (1992) sets out provisions relating to energy reservation in an industrial plant, building and machine.

Telecoms infrastructure

The specific laws and/or regulations regarding the investment in telecoms infrastructure include:

- Radio Communications Act, B.E. 2498 (1955) sets out provisions regarding licensing application and approval for production, use, importation, exportation and trading of radio communication equipment.
- Sound Broadcasting and Television Broadcasting Act B.E. 2498 (1955) sets out provisions regarding licensing application and approval for sound and television broadcasting business including legal obligation from such business operation.
- Telecommunications Business Act B.E. 2544. (2001) sets out provisions regarding licensing application and approval for operation of telecommunication business, requirements to access and interconnect telecommunication network, standard of telecommunication network and equipment, rights of licensee and user and details of contract between the licensee and user.
- Broadcasting and Television Businesses Act B.E. 2551 (2008) sets out provisions regarding licensing application and approval for operation of broadcasting and television business, details of types of business, ratio and details of programs to be broadcasted and requirements for construction of fundamental network and the use and connect of network.
- Organization to assign Radio Frequency and to regulate the Broadcasting and Telecommunications Services B.E. 2553 (2010) empowers NBTC and the National Telecommunications Commission (NTC) as the supervisory authority for business operation of broadcasting, television and telecommunication and sets out provisions regarding licensing application for such business operation.

Transport infrastructure

As mentioned above, mostly the form of investment in rail and road is PPP. Therefore, the relevant laws are for example PPP Act, GPSMA, FBA and IPA.

Other infrastructure

SOCIAL INFRASTRUCTURE (SCHOOLS, HOSPITALS, EMERGENCY SERVICES CENTERS / PRISONS)

The main acts regulating the below social infrastructure are as follows.

Education

- Private School Act B.E. 2550 (2007) empowers the Office of the Private Education Commission as the supervisory authority for operation of private school and sets out provisions regarding the requirements for establishment of private school in terms of licensing, operation and funds.
- Private Higher Education Institution Act B.E. 2546 (2003) empowers the Office of the Higher Education Commission as the supervisory authority for operation of private higher education institution and sets out provisions regarding the requirements for establishment of private higher education institution in terms of licensing, operation and funds.

Hospitals

Sanatorium Act, B.E. 2541 (1998) empowers the Sanatorium Commission as the supervisory authority for operation of sanatoriums and sets out provisions regarding the requirements for establishment of sanatorium in terms of licensing and operation.

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What is the applicable procurement process?

The Government Procurement and Supplies Management Act B.E. 2560 (2017) (GPSMA) is the recently enacted act regulating procurement process of public sector which is not captured under the PPP Act. Under the GPSMA, there are four methods for procurement:

- **General invitation** – Public authorities generally invite an operator and any qualified operator is able to make the offer. The relevant committee of each project will consider offers based on consideration of various factors, e.g. offering price, cost, quality of product or service and after-sale service, etc. The selection process could be different depending on practice of each authority. However, the principle of transparency is generally applied.
- **Selection process** – Public authorities invite at least three operators possessing qualifications specified by such authorities to make an offer.
- **Specific method** – Similar to the selection method but only one qualified operator is chosen to make an offer or negotiate with the authorities.
- **Design contest** – This approach is used only for the procurement of design or supervision of construction where it concerns with special construction to compliment fine arts or architecture of Thailand.

Public procurement is relevant where the Thai government or public authorities is seeking to outsource delivery of a new project. On an infrastructure project, a potential investor would have to bid in its own capacity or as part of a consortium to deliver the overall deal which could include design, build, operation, maintenance and financing of the relevant energy or infrastructure asset.

Requirements and conditions to participate in the procurement process are different depending on the terms of reference (TOR) of each project. In rail infrastructure procurement, some additional requirements or conditions are added to match the nature or type of such project.

In most cases, the public authorities will need to publish a contract notice and/or TOR in its website of and typically run one of the four procurement procedures under the GPSMA. Date, time and place to submit the offer or other electronics means are generally included in such publication. If the bidding process is needed, details will also stipulate in such publication.

The procurement process under the GPSMA is not applicable to certain projects including but not limited to:

- procurement of state enterprise in relation to direct commerce;
- procurement of arms and services regarding national security by G2G method or from other foreign countries whereby its laws specified otherwise;
- procurement for research and development to provide educational services to higher education or hire of consultancy which cannot follow the procurement under GPSMA;
- procurement by using loan or financial assistance from foreign entities; or
- procurement of higher education or sanatorium which is a public division.

A procurement which is not governed by procurement process under GPSMA will be subject to criteria specified by the Policy Committee of Government Procurement and Supplies Management.

Investing in energy and infrastructure

According to PPP Act, the public authority which is the project owner needs to conduct the feasibility study and prepare the joint investment project plan. A qualified external consultant is required to be hired to assist in studying the project and preparing the joint investment project plan. After the completion of the feasibility study and joint investment project plan, the project owner needs to request the approvals from the relevant minister and the PPP Committee in relation to the principle of the joint investment project plan. Once those approvals are duly granted, the matter will then be forwarded to the cabinet for final approval.

In relation to the selection process of private party, a bidding is a default method under the PPP Act. However, in certain limited cases, the cabinet may approve other means for the selection process. Under the bidding process, the project owner shall prepare a draft invitation to tender, draft document for selection of private entity and draft joint investment contract and propose them for the PPP Committee's approval. Once approved, the selection process of private party shall begin.

Upon receiving the result of the selection process and the draft joint investment contract negotiated with the selected private party, such draft joint investment contract shall be submitted to the Office of Attorney-General for review. Consequently, the full set of (i) selection result, (ii) reviewed draft joint investment contract and (iii) material conditions of the project shall be reviewed and approved by the minister of the project owner and the cabinet before executing the joint investment contract with the selected party.

After the joint investment contract is executed, the PPP Supervisory Committee will be set up to supervise the investment project. Revision to the executed joint investment contract could be done if the PPP Supervisory Committee's approval is granted and the draft of revised joint investment contract is approved by the Office of Attorney-General and the minister of the project owner.

Financing energy and infrastructure

The public sector may have prescribed requirements on the funding arrangements. Following entry into the contract, the main tool for controlling the financing is that, typically, on project finance deals, a refinancing of the senior debt will require the consent of the public sector.

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What are the most common forms of funding / investing in energy and infrastructure?

The principal forms of private sector funding/investment in energy and infrastructure in Thailand are:

Funding

Common forms of funding in energy and infrastructure include:

- loans made on a corporate-finance basis (balance sheet debt);
- loans made on a project-finance basis;
- bond finance;
- mezzanine debt (in some sectors);
- refinancing of the debt in operational projects; and
- asset financing.

Investing

Common forms of investing in energy and infrastructure include:

- Infrastructure fund which must be listed on the SET to raise capital from both individual investors and institutional investors in order to finance infrastructure projects across Thailand. Infrastructure fund is allowed to invest in infrastructure projects, for example, railway, road / expressway / toll-way / concession way, alternative energy, natural disaster prevention system, waterworks, airport /

airfield, telecommunications system and irrigation system / water management system. telecommunications system and irrigation system / water management system.

- Infrastructure trust which must be listed to raise funds from the public. The trust can invest in infrastructure assets of greenfield and / or brownfield projects. Infrastructure trust is allowed to invest in infrastructure projects that provide benefits to the public either in Thailand or overseas, for example, railroad, electrical power generating system, waterworks, road or expressway or concession way, airport, deep sea port, telecommunications system, alternative energy, irrigation system, natural disaster prevention system, pipeline transportation system and multi-infrastructure project with joint benefits to the community or interconnected communities.

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Restructuring

Enforcement and sanctions

When can there be regulatory investigations?

When the Securities and Exchange Commission, the Stock Exchange of Thailand, the Bank of Thailand or the Ministry of Finance considers that an authorized firm or regulated individual may have breached the ongoing compliance requirements, it will launch a formal investigation run by its committee and to the extent permissible under the laws concerning duties of those authorities. This may result in regulatory sanctions.

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What regulatory penalties may apply?

Regulatory penalties generally include:

- revocation / cancellation of licenses or permission;
- prevention from trading or involving in the securities market eg prohibition to be a director or executive of listed companies; and
- reimbursement of benefits received from regulatory violation or of expenses arising from investigation.

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What criminal penalties may apply?

Fines including daily fines until a violation is corrected and/or imprisonment are generally imposed to a natural person or company violating the regulations.

A director of the company may be subject to a fine or imprisonment if he or she orders or omits an action resulting in the company's violation. However, fines and other regulatory penalties are generally imposed provided that it is the company that violates the law.

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Tax

Tax issues

Are stamp, registration, transfer or other similar taxes applicable?

Are there stamp, registration, transfer or other similar taxes payable on the advance, transfer or assignment of a loan?

ADVANCE OF LOAN

No stamp, registration, transfer or other similar taxes are payable on the advance of a loan. However, the loan agreement itself is required to be affixed with stamp duty of THB1 for every THB2,000 or its fraction (i.e. 0.05% of the loan principal amount). The maximum stamp duty payable on a loan agreement is THB10,000.

TRANSFER OR ASSIGNMENT OF A LOAN

No stamp, registration, transfer or other similar taxes are payable on an assignment agreement for the transfer or assignment of a debt under a loan. Note that if a new loan agreement is to be executed, stamp duty will need to be affixed at the rate as mentioned above.

Are there stamp, registration, transfer or other similar taxes payable on the taking, transfer or assignment of a mortgage, debenture or other security?

MORTGAGES

Mortgages must be registered with the relevant government authority. Government fees for mortgage registrations are variable depending on the type of mortgaged property. Government fees are normally calculated on a percentage basis subject to variable maximum caps. No stamp duty is required to be paid.

Mortgages can be transferred or assigned to secure the transferred or assigned debts to which they relate. The registration fees are normally calculated on a percentage basis with variable maximum caps. No stamp duty is required to be paid.

DEBENTURES

The transfer of a corporate debenture is required to be affixed with THB1 stamp duty for every THB1,000 or its fraction (i.e. 0.1%) of the face value of the instrument.

OTHER SECURITY

A guarantee is required to be affixed with stamp duty of between THB1 to THB10.

A pledge is required to be affixed with stamp duty of THB1 for every THB2,000 or fraction thereof (i.e. 0.05%) of the amount of debt which it secures. Stamp duty is not required to be paid if the loan agreement which is secured by such pledge is duly affixed with stamp duty.

A business security agreement under the Business Security Act B.E. 2558 (2015) is required to be registered with the relevant authority and is subject to the payment of certain government fees. No stamp duty is required to be paid.

Are there stamp, registration, transfer or other similar taxes payable on the issue, transfer or assignment of a debt security (eg a bond)?

A corporate bond is required to be affixed with stamp duty of THB5.

Any government bond sold in Thailand is required to be affixed with stamp duty of THB1 for every THB100 or its fraction (i.e. 1%) of the face value of the instrument.

The transfer of a Thai government bond and of certain instruments issued by Bank for Agriculture and Agricultural Cooperatives are exempt from stamp duty.

Bills (i.e. bills of exchange and promissory notes) are required to be affixed with stamp duty of THB3 per instrument, except for a series of such bills or notes if the first bill or note is duly affixed with stamp duty.

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Do tax authorities take priority on enforcement?

On the enforcement of security, do tax authorities take priority over secured lenders or secured debt security holders (eg secured bond holders)?

Secured lenders and secured debt security holders take priority over the Revenue Department on enforcement of a security.

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Is withholding tax on interest payments applicable?

Is there withholding tax on interest payments under a loan?

Yes, Thailand levies a withholding tax on interest payments under a loan. Profits earned from the sale of a bond or the redemption of bills are also subject to withholding tax.

If so:

What is the rate of withholding?

The current rate of withholding tax on loan interest in Thailand (i.e. the basic rate) is 1% where the lender is a legal entity residing in Thailand and 15% where the lender is a natural person residing in Thailand.

The current rate of withholding tax (i.e. the basic rate) applicable to a legal entity or a natural person residing outside Thailand is 15%.

What are the key exemptions?

Exemptions from withholding tax on interest include those applicable to:

- payments of interest under a loan made by either a commercial bank, a finance company, a security company, a credit finance company or an asset management company regulated under Thai law (each a Finance Entity) or a legal entity of a Finance Entity and certain foundations or associations; and
- payments of interest to a payee resident in a country which has a double tax treaty with Thailand (such treaty may only provide for a partial exemption).

Would the same analysis apply to interest payments under a debt security (e.g. a bond)?

The applicable exemptions from withholding tax on interest payments under a debt security depend on the type of payer, for example:

- payments of interest, including, but not limited to, interest arising from bonds, deposits, debentures and bills issued, made or entered into by a Finance Entity or certain foundations or associations to another Finance Entity or certain foundations or associations, is exempt from withholding tax;
- payments of interest arising from bonds and debentures issued or entered into by a legal entity (which is not a Finance Entity) to any Finance Entity is subject to a reduced withholding tax rate of 1%; and
- payments of interest arising from bills issued by a legal entity (which is not a Finance Entity) to any legal entity (which is not a Finance Entity) is subject to a reduced withholding tax rate of 1%.

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Are foreign lenders and debt security holders subject to tax on interest payments?

Will the lender be taxed on interest payments under a loan in the jurisdiction of the borrower (other than by way of the application of withholding taxes (if any)), assuming the lender is not otherwise resident in that jurisdiction for tax purposes (e.g. by virtue of incorporation, residence or local branch)?

No.

Would the same analysis apply to interest payments under a debt security (e.g. a bond)?

Yes.

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