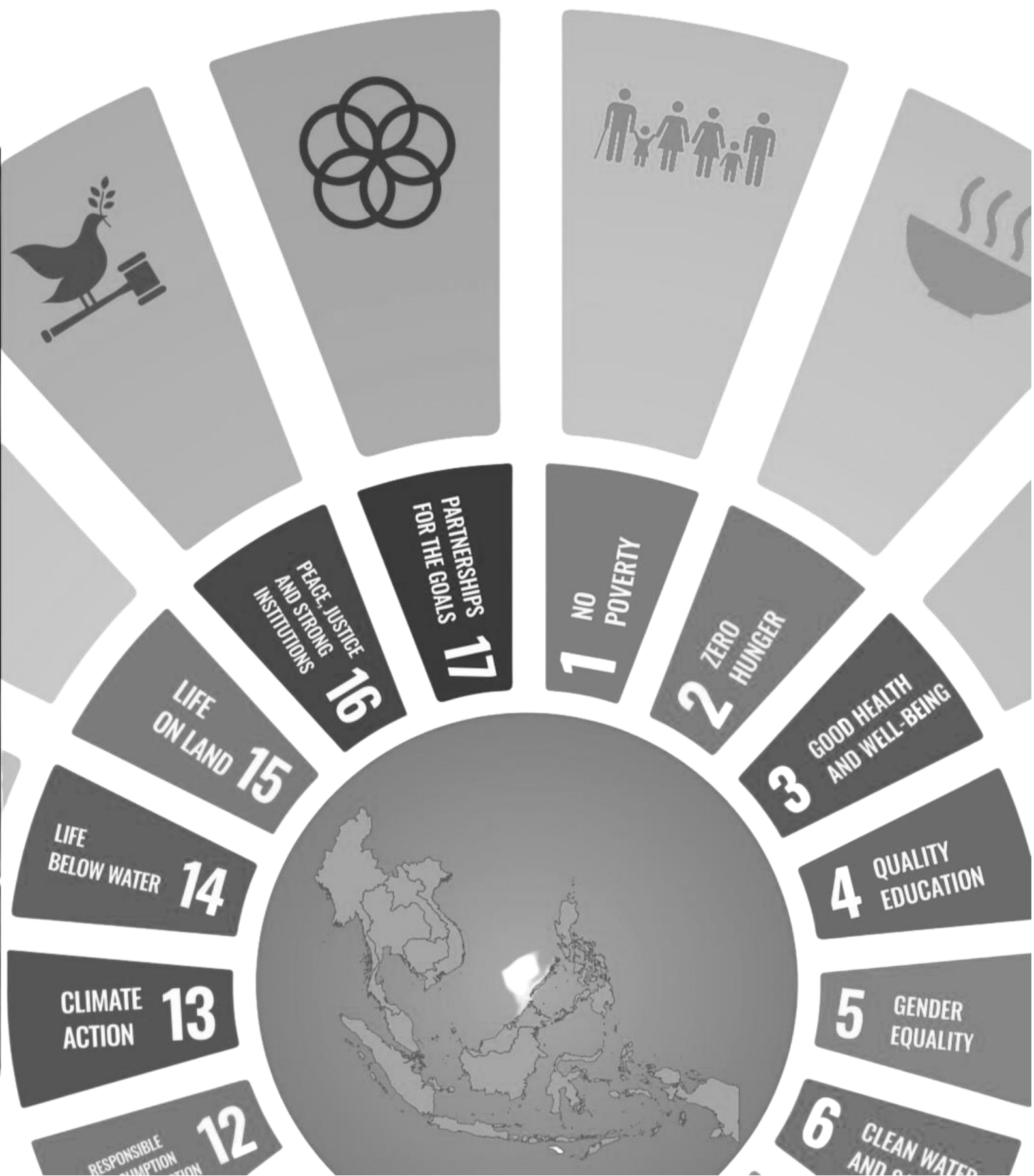


# ASEAN SDG Bond Toolkit

## Supplement: Legal and Regulatory Aspects for Thailand



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**Edited by Ashurst LLP**

## **Introduction**

The bond market or corporate bond market in Thailand was instituted after the enactment of the SEC Act (as defined below). Both Thai and foreign entities may issue bonds under the SEC Act, subject to a prior approval from the Ministry of Finance and/or the SEC (as defined below) and the filing of registration statements and prospectus with SEC, as the case may be.

Bond offerings in Thailand to public, institutional investors, ultra-high net worth investors and/or high net worth investors require a “factsheet” in the required format and information, including products and key risk factors. Bond offerings in Thailand to PP10 (as defined below) can be made via certain "safe harbour" exemptions. There are currently specific requirements for Environmental, Social, and Governance bonds (or **ESG Bonds**) which include green, social and sustainability bonds (or **GSS Bonds**) issuances. In the near future, qualifying GSS Bond issuances can benefit from approval fee and/or filing fee exemptions. The market practice is to rely on international standards and/or a second party opinion to determine if a particular bond would qualify as a GSS Bond. Support for GSS Bonds in Thailand is expected to continue growing.

## **Executive Summary**

### **Thailand issuers**

Both private entity and public sector Thai issuers are allowed to issue GSS and SDG Bonds satisfying the specific guidelines and regulations of GSS Bonds.

In 2021, the SEC granted exemptions for approval fees and filing fees in certain cases e.g. the first issuance of GSS Bonds. The SEC is further considering reduction of filing fees for GSS Bonds.

### **Thailand investors**

Thai investors are allowed to invest in GSS bonds in the same way as non-GSS bonds.

There are exemptions from filing requirements for bond issuances in some instances.





## A. Information for Issuers in Thailand

### 1. Are there any regulations around issuances of GSS and SDG Bonds?

Yes. There are specific guidelines and regulations of GSS Bonds. The Securities and Exchange Commission (**SEC**) does not consider GSS Bonds as a new debt instrument in Thailand since GSS Bonds are bonds issued for the fund raising for environment, social and/or sustainability project of the issuers. Therefore, existing regulations applicable to issuance of debt securities are also used to supervise the issuer of GSS Bonds, in addition to certain guidelines and regulations of GSS Bonds.

The specific guidelines and regulations for offering and disclosure of GSS Bonds includes the requirement to comply with GSS Bonds standards and taxonomy (if any), minimum disclosure that must comply with the referential standards, e.g. use of proceeds, process for project evaluation and selection, management of proceeds and reporting, and the recommendation to appoint external review providers (voluntary).

### 2. Can bonds be issued by private and public sector entities in Thailand?

	Private Placement <sup>1</sup> <i>Offers not made to the general public</i>	Public Placement <sup>2</sup> <i>Offers made to the public</i>
<b>Private Entity Issuers</b> <i>Private companies and other entities</i>	 Yes, subject to the conditions in Question 3 of Part A.	 Yes, subject to the conditions in Question 3 of Part A.
<b>Public Sector Issuers</b> <i>Government bodies and agencies</i>	 Yes.	 Yes.

### 3. What key requirements must issuers in Thailand fulfil to issue GSS and SDG Bonds?

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
<b>Corporate form</b>	(i) Limited company and public company incorporated in Thailand; (ii) Financial institutions under the Financial Institution Business Act of Thailand; (iii) Thai government agencies (under specific regulations); (iv) Foreign entities (under specific regulations); and (v) Trusts.	
<b>Currency</b>	Baht or foreign currencies (under specific regulations).	
<b>Key requirements</b>	<b>For PP10, Institutional Investors, Ultra-High Net Worth Issuer/High Net Worth issuers</b> (a) Auditor report shows no view of incorrect financial statements or limited scope of audit. (b) No failure to file the financial statements or related reports to SEC/the Stock Exchange of Thailand (" <b>SET</b> "). (c) The directors and executives shall be listed on the database of directors and executives of the issuers. (d) No payment default under any debt instrument/financing loan is continuing.	<b>For Public Offering issuers</b> (a) Auditor report shows no view of incorrect financial statements or limited scope of audit. (b) No failure to file the financial statements or related reports to SEC/SET. (c) The directors and executives shall be listed on the database of directors and executives of the issuers. (d) No payment default under any debt instrument/financing loan is continuing. (e) No material violation of the rules.

<sup>1</sup> "**Private Placement**" or "**PP**" is an offering for sale of bonds to PP10, Institutional Investors, Ultra High Net Worth Investors or High Net Worth Investors, etc.

<sup>2</sup> In this wrapper, this refers to a public offering. "**Public Offering**" or "**PO**" is an offering for sale of bonds to public in Thailand.

	<p>(e) No material violation of the rules.</p> <p>(f) No record of contravening a regulation relating to the misuse of proceeds from an offering for sale.</p> <p>(g) No record of breaches of any provision of the limited offer for sale of any type of debt securities or contravening a regulation relating to the misuse of proceeds from such sale within two (2) years prior to the filing date of the application.</p>	<p>(f) No record of contravening a regulation relating to the misuse of proceeds from an offering for sale.</p> <p>(g) No record of breaches of any provision of the limited offer for sale of any type of debt securities or contravening a regulation relating to the misuse of proceeds from such sale within two (2) years prior to the filing date of the application.</p> <p>(h) No grounds to suspect that the directors, executives, and major shareholders have other interests which may be in conflict with the best interests of the business or have benefits transferred from the business.</p>
<p><b>Conditions for offers to investors in Thailand</b></p>	<p><b>PP10<sup>3</sup></b>  <b>Approval:</b> Deemed approved by SEC, subject to certain requirements under the relevant regulations.  <b>Disclosure Requirements:</b> Not required.</p> <p><b><u>Institutional Investors<sup>4</sup></u></b>  <b>Approval:</b> Deemed approved by SEC, subject to certain requirements under the relevant regulations.  <b>Disclosure Requirements:</b> Submit a registration statements and draft prospectus is required at minimum.</p> <p><b><u>Ultra-High Net Worth Investors<sup>5</sup>/High Net Worth Investors</u></b>  <b>Approval:</b> SEC's approval is required.  <b>Disclosure Requirements:</b> Submit a registration statements and draft prospectus is required with the key financial ratios.</p>	<p><b>Approval:</b> SEC's approval is required.</p> <p><b>Disclosure Requirements:</b> Registration statements and a draft prospectus is required with the key financial ratios.</p>
<p><b>GSS specific requirements</b></p>	<p>For Institutional Investors, same as Ultra-High Net Worth Offering, High Net Worth Offering and Public Offering.</p> <p>Except for the PP10 placement, the issuer shall also submit a certification of compliance indicating the applicable standard and taxonomy (if any) for its GSS Bond issuance.</p>	<p><b>Purpose of issuance:</b> For projects contributing to environmental benefits and/or social development.</p> <p><b>Disclosure requirements:</b> To ensure that GSS Bonds will be utilized for environmental and/or social projects, the SEC sets the key disclosure requirements for filing which includes:</p> <ol style="list-style-type: none"> <li>1. Selection of standards and taxonomy (if any), the issuer must comply with internationally or nationally recognized GSS Bonds standards and taxonomy (if any), for example <ol style="list-style-type: none"> <li>(a) for Green bonds, ASEAN Green Bonds Standards (ASEAN GBS) or International Capital Market</li> </ol> </li> </ol>

<sup>3</sup> "PP10" means, under the relevant regulation of the SEC Act, (1) the institutional investors not exceeding ten in number during any four month period; (2) UHNW and HNW not exceeding ten in number with total outstanding amount not exceeding Baht 50 million at any time.

<sup>4</sup> "Institutional Investors" means the institutions as defined under the relevant regulation of the SEC Act.

<sup>5</sup> "Ultra-High Net Worth Investors" or "UHNW" means the investors with characteristics defined under the relevant regulation of the SEC Act.

		<p>Association Green Bond Principles (ICMA GBP);</p> <p>(b) for Social Bonds, ASEAN Social Bonds Standards (ASEAN SBS) or International Capital Market Association Social Bond Principles (ICMA SBP); and</p> <p>(c) for Sustainability Bonds, ASEAN Sustainability Bonds Standards (ASEAN SUS) or International Capital Market Association Sustainability Bond Guidelines (ICMA SBG);</p> <p>2. <b>Additional disclosure in filing:</b> Minimum disclosure shall comply with the referential Standards under (1.), e.g., Use of Proceeds, Process of Project Evaluation and Selection, Management of Proceeds and Reporting;</p> <p>3. <b>External Review Provider:</b> SEC encourages the issuer to appoint an External Review Provider from the beginning of the issuance process to assess the alignment of its GSS Bonds and/or framework with the referential standards under (1.), and to disclose the external review provider's credentials and scope of review via the issuer's website or other channels to ensure the bonds' credibility.</p>
<b>Specific requirements for public sector issuers</b>	There are no significant differences between public sector issuers and private entity issuers. The differences depend only on type of offering.	
<b>Specific requirements for foreign issuers</b>	<p>Foreign entities considering the issuance of Baht-denominated bonds in Thailand shall seek an approval from the Ministry of Finance prior to the mentioned process with the SEC. The bonds issued in Baht may be issued in any scheme i.e., Private Placement or Public Offering.</p> <p>The foreign issuer is required to appoint a contact person in Thailand for the purpose of coordinating and contacting with any person including receiving documents, orders, warrants, or any documents related to the foreign entity, and can demonstrate that such person will be able to perform the assigned matter until the maturity date.</p>	

#### 4. Are there any incentives for issuers of GSS Bonds or SDG Bonds?

Since May 2019, the SEC has waived registration fees for GSS Bonds. This incentive has currently been extended until 31 May 2025 and expanded to include the Sustainability-Linked Bond (or "SLB"), following the issuance of the SLB regulation in May 2021.

#### 5. Other comments





Since April 2021, SEC issued the regulation with respect to an approval and offering of SLB. SLB is a part of ESG Bonds in which the bonds are a forward-looking performance-based instrument. The bonds' financial or structural characteristics (such as the coupon rate and the issuer's implementation of sustainability-related measures) are adjusted depending on the achievement of pre-defined sustainability targets. The adjustment can be in both directions, e.g. an increase in coupon rate if targets are not met or a decrease in coupon rate if targets are met. The key difference with GSS Bonds is that the proceeds can be used for general corporate purposes. As with GSS bond, the SLB regulations are based on internationally recognized standards and incorporate references to conventional debt securities regulation. The SLB regulations also include additional approval and disclosure requirements such as a mandatory external review provider in the case of a public offering and a private placement to High Net Worth Investors. The market interest in SLBs in Thailand is expected to grow.

## B. Information for Investors in Thailand

### 1. Are there any regulations around offers of GSS and SDG Bonds to investors in Thailand?

No, there are no particular requirements.

### 2. Can investors in Thailand subscribe for SDG and GSS Bonds?

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
<b>Private Entity Issuers</b> <i>Private companies and other entities</i>	 Yes, subject to conditions in Question 4 of Part B.	 Yes.
<b>Public Sector Issuers</b> <i>Government bodies and agencies</i>	 Yes, subject to conditions in Question 4 of Part B.	 Yes.

### 3. Are there any incentives for investors investing in GSS Bonds or SDG Bonds?

See Question 4 of Part A.

### 4. When can an offer be made to investors in Thailand without a prospectus?

Yes, there are exemptions from filing requirements for bond issuances of PP10 as allowed under the the Securities and Exchange Act of Thailand B.E. 2535 (A.D. 1992), as amended ("**SEC Act**"). However, certain documents shall be submitted to SEC to be qualified as deemed approval:

- (i) Transfer restriction letter (a letter issued by the issuer to SEC to confirm that, at any time, there will be no transfer which is in breach of such type of investors);
- (ii) Use of proceeds letter (a letter issued by the issuer to SEC to confirm that the proceeds received from bond issuance will be used as specified);
- (iii) (in the case of secured bonds or bond with bondholders' representative) Draft terms and conditions governing rights and obligations between the issuer and bondholders and draft bondholders' representative appointment agreement; and
- (iv) Certain documents as required by SEC for any particular bonds.

Upon completion of subscription, the Issuer shall submit a "sale report" to SEC informing, other things, names of investors, issued amount, issue date and maturity date.

## V. Notable developments

After the scheme of fee exemption as an incentive for GSS Bonds, major companies in SET issued Green Bonds with the coupon rates lower than normal bonds. Since the regulations with respect to GSS Bonds and SLB have only been recently issued (2021-2022), SEC has not yet had further major developments for such bonds (only on clarification with respect to disclosure). Nevertheless, to promote GSS Bond issuance, SEC has been actively engaging with potential issuers, underwriters and investors, through capacity buildings and seminars to enhance their understanding and awareness of sustainable finance issues and to provide a discussion forum on the issuance process, success cases and other relevant topics with regards to green or sustainable finance taxonomy.



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