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Infrastructure Trusts: The New Face of Infrastructure Funds

From the time the Royal Thai Armed Forces launched a coup d'état in May 2014 and Thailand's reinstated military government embarked on an ambitious program to invigorate the country's economy, numerous proposals have emerged to develop Thailand's infrastructure, and especially, its inland transportation systems. Development of Thailand's inland transportation systems is expected to improve the country's logistics capabilities and help maintain a competitive advantage among the other ASEAN Member States.

In view of the perceived advantage of developing Thailand's inland transportation systems, efforts are already underway to integrate Thailand's four main transportation platforms—i.e., rail, air, road, and water—both within the country and with neighboring countries. The integration is set to be implemented over an eight-year period and is estimated to have an investment value of THB 2.4 trillion.

Public infrastructure projects are normally financed by the private sector, rather than through the government's limited budget. It is, however, a challenge to attract public investors to invest in such fixed-revenue generating assets, as opposed to other conventional securities. With this challenge in mind, a greater degree of sophistication has been employed, as of late, to adequately raise funds for these projects in the capital market.

The Securities and Exchange Commission (SEC), as the principal regulator in the capital market, periodically develops and launches new investment vehicles for investors, while meeting the demand of infrastructure owners. In November 2014, the SEC announced that it was contemplating new regulations, promulgated by the Capital Market Supervisory Board, which would introduce one such new investment vehicle: the "Infrastructure Trust" (IFT). The IFT would be introduced into the market as an alternative fundraising channel for domestic and overseas infrastructure development and is expected to be officially launched in early 2015.

The IFT is not a completely new concept, but is, in fact, a hybrid of the preexisting "Infrastructure Fund" (IFF) and "Real Estate Investment Trust" (REIT). The IFT will serve the same purpose as an IFF, but will have the advantages of a trust, which a mutual fund lacks. One of the main differences between the IFT and the IFF is that an IFT can facilitate overseas investment in the following infrastructure project areas:

1. Public railway transportation
2. Electricity
3. Water supply
4. Road, special way, or concession way
5. Airport
6. Deep seaport
7. Telecommunications
8. Alternative energy
9. Water management or irrigation
10. Natural disaster prevention systems

By contrast, an IFF does not allow for outbound investment. In an effort to stimulate investment from foreign infrastructure owners, the SEC will ease its restrictions on foreign corporations seeking to raise funds for their infrastructure projects by allowing them to set up an IFT and offer it via a Thai underwriter.

Another difference between an IFT and an IFF is that an IFF is limited to funding public infrastructure projects that are deemed beneficial to Thailand. The new IFT is not subject to such a restriction. An IFT is able to fund multiple public and non-public infrastructure projects, but each project must hold a value of at least THB 3 billion.

Similar to an REIT, an IFT is governed by the Trust for Transactions in Capital Market Act B.E. 2550 (2007), which stipulates that a trust is not recognized as a juristic person under the Civil and Commercial Code, but rather, as a separate "piece of property" managed by the trustee for the benefit of the beneficiary/trust unit holder. The entities eligible to undertake a trustee business are limited to:

1. a commercial bank under the Financial Institution Business Act;
2. a financial institution established under a specific law; or
3. a juristic person, as specified in a SEC notification.

An IFT, by its structure, would create more flexibility for infrastructure developers/owners and investors, compared to mutual funds or an IFF, as the draft IFT regulations are expected to allow IFTs to reinvest in the same project or borrow loans and/or incur encumbrances, including putting up property as collateral.

Although the full details of the draft IFT regulations have not yet been disclosed, it is expected that IFTs will allow for investment in onshore and offshore infrastructure projects through making direct freehold or leasehold investments in an infrastructure project, revenue-sharing agreements, or indirect investment in property holding company stocks. The minimum value of a project, as required by the SEC, is THB 10 billion. If IFT certificates are publicly offered to retail investors, 70% of its investment in a project must be derived from commercial revenue and the unit must be listed on the Stock Exchange of Thailand thereafter—otherwise, IFT certificates could be offered exclusively to investors who can commit more than THB 10 million.

The only disadvantage appears to be that an IFT certificate holder is still obligated to pay personal income tax on the benefits received from an IFT, while the IFF unit holder will enjoy a personal income tax exemption of ten years.

IFTs are a smart choice for both domestic and overseas infrastructure developers who wish to raise funds in the Thai capital market. Whether the fundamental incentives, as provided by the SEC, will appeal to Thai investors will soon be seen.