

Infrastructure Funds

Background

The Thai Securities and Exchange Commission (SEC) has issued a notification for the establishment and management of Infrastructure Funds (each a Fund).

From 16 January 2011, a Fund can be established and managed by a Thai licensed asset management company. The purpose of the Fund is to mobilise finance that would encourage economic expansion and encourage long term investment in Thailand. The Fund will also provide an alternative for investors to invest in the assets of infrastructure projects.

Types of assets which may be invested in

The assets of the infrastructure project which may be invested in include the ownership or possession of the following assets: leasehold rights, other rights over land, buildings, any other structures, machinery or equipment, concessions, receivables, claims under certain commercial contracts. The Fund must invest directly in the infrastructure assets or hold shares in a company that invests in not less than 75 per cent of the total assets of an infrastructure project.

Types of projects

The infrastructure projects that the Fund can invest in include both completed and non-completed projects (brownfield and greenfield projects). The Fund can also indirectly invest in the assets of infrastructure businesses by holding at least 75 per cent of the paid-up capital of any company that invests in infrastructure projects. Eligible infrastructure projects include railway systems, electricity supplies, water supplies, expressways, airports, deep-sea projects such as oil and gas pipelines, telecommunications and alternative energy. However, the foreign limit imposed in the laws/regulations governing and regulating the infrastructure project will still apply. This means that the asset management company must consider the foreign limit when investing in the assets of an infrastructure project as there may be limits on the percentage of units foreign investors can acquire in the Fund.

Type of Fund

A Fund must be in the form of a closed-ended fund with capital of not less than THB 2 billion. The size of investment in each infrastructure project must be at least THB 1 billion. Within six months after a Fund is registered, not less than 75 per cent of the total assets of the Fund must be invested.

If a Fund invests in a completed project, it is required to offer the units to at least 500 public investors and list all units for trading on the Stock Exchange of Thailand (SET). However, if a Fund invests in a non-completed project which is less than 30 per cent finished, it is required to offer the units to at least 35 large investors (investing at least THB 10 million each). Within three years of the project being completed, the asset management company must allocate shares to the public and list all units for trading in the SET. Each investor and the investors in the same group cannot invest in more than 1/3 of the total investment units of the Fund.

Key Issues

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Subject to certain conditions, the Fund can borrow money but the debt to equity ratio must not exceed three times its total assets. The Fund must pay out dividends of not less than 90 per cent of its net profits adjusted within 90 days from the end of each financial year.

If you require any further information on any of the issues raised in this briefing note, please contact the authors at the address above.

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

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