



LSH Newsletter
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INFRASTRUCTURE FUND

**CAPITAL MARKETS
PRACTICE GROUP**

Currently, the Office of Securities and Exchange Commission of Thailand (the “**SEC**”) is reviewing the requirements for establishment of infrastructure funds in Thailand. This is an initiative to respond to the needs of funds for development of infrastructure in Thailand, while allowing investors to invest in part of a portfolio of infrastructure assets, such as airports, toll roads, and transportation systems. In Asian countries and other countries around the world, including Australia, New Zealand, Singapore, South Korea and Canada, a number of infrastructure funds have successfully been introduced as an instrument in the capital markets to develop infrastructure projects.

On 1 September 2008, the SEC launched a hearing document regarding the approval of establishment and management of infrastructure funds, publish document no. AorNor. 13/2551 dated 1 September 2008 (the “**Hearing**”). The material details of the Hearing are summarized below.

Fund Type

The basic fund type for an infrastructure fund (the “**Fund**”) shall be as follows:

- the fund shall be a closed-end fund;
- the Fund’s minimum investment amount shall be Baht 5,000 million, and the minimum number of investors shall not be less than 250 subscribers; and
- the investment units shall be registered as listed securities in the Stock Exchange of Thailand.

Investment

In an average one year period, at least 75% of the net asset value of the Fund shall be invested under the following means:

- investment in the Infrastructure Project Assets (as defined below) or;
- investment in the shares of the juristic person (which may be either a limited company, a public limited company or a specific juristic person for the securitization purpose) investing in the Infrastructure Project Assets (as defined below), which such investment shall not be less than 90% of the asset value according to its latest audited financial statement, provided that at least 75% of the total issuing shares of such juristic person must be held by the Fund.

In addition, an Infrastructure Project (as defined below) which the Fund is allowed to invest in must have completed its construction, is able to be operated or provide benefits, and must be used to provide economic benefits in Thailand.

Definition of “Infrastructure Project Assets”

The “**Infrastructure Project Asset(s)**” include:

- ownership of land, buildings, structures, machines or equipments, including other movable properties used in the Infrastructure Projects (as defined below);
- possession of land, buildings, structures, machines or equipments, including other movable properties used in the Infrastructure Projects (as defined below);
- concessions for the Infrastructure Projects (as defined below), which the government permits assignment of right;
- leasehold right in the Infrastructure Projects (as defined below) in the above item no. 1-3;
- future receivable right of the Infrastructure Projects (as defined below) in the above item no. 1-3; and
- other assets as the Capital Markets Supervisory Board may further prescribe.

Definition of “Infrastructure Projects”

The “**Infrastructure Project(s)**” means a business or operation concerning electricity supply, water supply, electric trains, mass transportation, roads, telephone, telecommunication, airports and other business or operations as the Capital Markets Supervisory Board may further prescribe.

Gearing Ratio

The Fund can borrow or cause an obligation not exceeding 10% of the net asset value of the Fund, for the purpose of investment, operation, or improvement of the Infrastructure Project Assets, either by itself or by the juristic person, which not less than 75% of the total issuing shares of such juristic person are held by the Fund.

The Duties of the Fund Management Company

- The duties of the fund management company include appointment of a property fund manager approved by the SEC to manage the fund.
- The fund management company may consider appointing an Infrastructure Project manager to manage the Infrastructure Project.

Restriction for Investment Unit Holding

The investment units shall not be allotted or offered to the following persons or entities:

- any person or group of persons in excess of one-third of the total outstanding investment units;

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- special subscribers, owners, lessors, assignors of lease or grantors of right over the future receivables, or the person of the same group in excess of 50% of the total outstanding investment units; and
 - foreign investors in excess of 49% of the total outstanding investment units.

Dividend Distribution

If the Fund has net profit, the Fund shall pay out dividend to the unitholders equivalent to at least 90% of the annual net profit or not less than 90% of cash or assets which are equal to cash held by the Fund at the dividend announcement day, whichever is lower.

Certain comments in relation to the Hearing have been provided by legal advisors and fund management companies, etc., to the SEC including the following suggestions:

1. The Fund should not be limited to invest only in the Infrastructure Projects which have been completely constructed because infrastructure projects usually require a lot more funding in the early stage of the project construction.
2. Foreigner investors should be allowed to hold investment units exceeding 49% because large infrastructure projects often require investment funds from foreign investment.
3. Gearing ratio should be more than 10% of the net asset value of the Fund. The main reason for this is that in certain operating years, the relevant assets may need material maintenance or improvement which may require substantial funding to keep them in good operation.

According to our recent informal discussion with the SEC, we were informed that the SEC is reviewing and revising the Hearing in a number of aspects, and expects to publish the revised draft regulations for public hearing within the end of the second quarter of 2009.

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LS Horizon Limited was founded on the vision of a Thai-based law firm delivering international quality legal services.

Today, LS Horizon Limited has more than 40 attorneys, many of whom have previous experience at top-tier international law firms in Thailand and overseas.

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- Capital Markets,
- Corporate Real Estate,
- Banking and Finance,
- Private Equity and Foreign Direct Investment,
- Administrative and Constitutional Law,
- Dispute Resolution and Employment and Labor.



THERE IS ALWAYS A SOLUTION.

Important Note and Disclaimer

The content of this Newsletter is prepared as of 13 January 2009.

This Newsletter is informational in nature and is not to be considered as legal advice. It does not exhaustively cover the subjects which it treats, and is only intended to address some of the key issues. When specific questions arise in practice, it is necessary to obtain appropriate legal advice.