

(UNOFFICIAL TRANSLATION)

Codified up to No.12

As of 6 August 2018

Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference.

**Notification of the Capital Market Supervisory Board
No. Tor Nor. 1/2554
Re: Rules, Conditions and Procedures for
Establishment and Management of Infrastructure Funds**

By virtue of Section 16/6 of the *Securities and Exchange Act B.E. 2535 (1992)*, as amended by the *Securities and Exchange Act (No.4) B.E. 2551 (2008)*, and Section 100, Section 109 and Section 117 of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions in relation to the restriction of rights and liberties of persons which Section 29, in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 In this Notification:

- (1) “*fund*” means an infrastructure fund;
- (2) “*management company*” means a securities company holding a license to manage mutual funds;
- (3) “*infrastructure asset*” means:
 - (a) the ownership of, the possessory right or the leasehold in land, building, construction, machine, equipment including all other related assets used in the operation of an infrastructure business;
 - (b) the concession right to operate an infrastructure business;
 - (c) the right to receive the future income or the right under the income sharing agreement that will be generated by an infrastructure business or will result from the operation of an infrastructure business or the operation of any other assets acquired through the operation of an infrastructure business;
 - (d) the right of claim in a sales and purchase or installation agreement for machines and equipment or in a construction agreement or in a sales and purchase agreement for the products or services produced or supplied by an infrastructure business;
 - (e)⁷ the shares issued by a company having all of the following characteristics:
 1. investing in the assets under (a) (b) (c) or (d) collectively not less than seventy five percent of the company’s total asset value or having the income derived from the operation of the assets under (a) (b) (c) or (d) not less than seventy five percent of the company’s total income in each fiscal year; and
 2. having its shares held by a *fund* at an amount more than seventy five percent of its outstanding shares and representing more than seventy five percent of its total voting rights;

⁷ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8)* dated 18 August 2016 (effective on 16 September 2016).

(f)⁷ the debt instruments issued by the company under (e) or an agreement in the nature of money lending to the company under (e), provided that a **fund** has already become the shareholder of such company.

(4)⁴ “**infrastructure business**” means the following businesses:

- (a) rail or pipe transportation system;
- (b) electricity;
- (c) water supply;
- (d) road, toll road or concession road;
- (e) airport;
- (f) deep sea port;
- (g) telecommunication or information and communication technology

infrastructure;

- (h) alternative energy;
- (i) water management system or irrigation;
- (j) natural disaster preventive system, including the warning and management systems to mitigate the severity resulting from natural disaster;
- (k) waste management system;

(l) a business in the nature of multi-infrastructure business under (a) to (k), having all of the following characteristics:

1. linking, promoting or generating mutual benefits or benefits to the same or nearby communities;
2. generating or to generate income not less than eighty percent of the total aggregate income of all such multi-infrastructure businesses.

(5) “**company**” means a limited company or a public limited company;

(6) “**alternative energy**” means a business that generates energy from non-depletable energy sources and has a lower impact on the environment than fossil energy;

(6/1)¹ “**state**” means:

- (a) government administration;
- (b) government organization under the Law on Establishment of

Government Organization and State Enterprise under the relevant incorporating law, including state-owned business enterprise which is not a juristic person;

(7)³ *repealed.*

(8) “**Stock Exchange**” means the Stock Exchange of Thailand;

(9) “**brownfield project**” means an infrastructure business that has begun generating commercial income from its completed construction;

(10) “**greenfield project**” means an infrastructure business which is not a **brownfield project**;

⁷ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8)* dated 18 August 2016 (effective on 16 September 2016).

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 13/2558 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 5)* dated 9 April 2015 (effective on 1 June 2015).

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 40/2555 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2)* dated 17 August 2012 (effective on 1 September 2012).

³ Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

(11) “**major investor**” means a person who acquires the units of a **fund** for the first time at an amount not less than ten million baht. In the case where such person acquires additional units, the total value of the units held when combined with the existing units shall be no less than ten million baht.

The calculation for the total value of the units held in Paragraph 1 shall be based on the trading value of each transaction.

(12)³ *repealed*;

(13)² “**connected person**” means the following persons;

(a) connected person under the *Notification concerning Conduct Which May Constitute a Conflict of Interest in the Management of Mutual Funds* in the part related to conclusion of transactions for property funds, *mutatis mutandis*;

(b) related party of a **fund** which shall be defined in accordance with the Notification of the Capital Market Supervisory Board issued by virtue of Section 89/1, in the part related to the definition of related party, *mutatis mutandis*;

(14) “**financial advisor**” means a financial advisor on the approved list of the SEC Office;

(15) “**fund supervisor**” means the supervisor of a **fund**;

(16)² “**common person group**” means the persons with one or more of the following relationships:

(a) spousal relationship and parent-minor child relationship;

(b) relationship between a juristic person and a shareholder or partner of such juristic person which holds, directly or indirectly, more than fifty percent of the issued shares of, or more than fifty percent of the partnership interest in, such juristic person;

(c) private fund of persons in the relationship under (1) or (2), excluding any provident fund.

(16/1)³ “**selling agent**” means a securities company holding a securities underwriting license whereby selling of units is permitted;

(17) “**registered capital**” means the amount of money which a management company receives from selling units and is registered with the SEC Office;

(17/1)⁸ “**auditor**” means a certified public accountant who has obtained an approval from the SEC Office;

(18) “**association**” means an association related to securities business which is licensed by and registered with the SEC Office with the objective to promote and develop

³ Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

³ Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

⁸ Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8)* dated 18 August 2016 (effective on 16 September 2016).

securities business related to investment.

Clause 2 This Notification shall apply to:

- (1) the application for approval and the approval for establishment of *funds*;
- (2) the allotment and the offer for sale of the units of *funds*;
- (3) the investment and **income generating activities** of *funds*;
- (4) the administration and management of *funds* in any matter other than (3).

Clause 3 In addition to this Notification, a *management company* shall comply with other notifications which specify rules related to *funds* in the following matters:

- (1) the details of the *fund* project;
- (2) the stipulation of the commitment between the unitholders and the *management company*;
- (3) the prospectus for the offer for sale of *fund* units;
- (4) the registration of a pool of assets as a *fund*;
- (5) the preparation of unitholder register;
- (6) the prevention of conflicts of interest between the *management company* and the unitholders;
- (7) the money borrowing or creation of encumbrances on a *fund*'s assets;
- (8) the liquidation of a *fund*.

In the case where no specific notifications prescribe the rules related to the matters of *funds* in Paragraph 1, the *management company* shall comply with other notifications prescribing such rules for general mutual funds.

Clause 4 For the establishment and management of a *fund*, the *management company* shall comply with the principles of business undertaking under the Notification of the Office of Securities and Exchange Commission concerning *Duties related to Infrastructure Funds of Management Company*, measures on non-compliance, and additional rules governing the following matters:

- (1) the establishment of a *fund* and post-approval proceeding in Part 1;
- (2) the provisions on the proceeding of an established *fund* in Part 2;
- (3) the administration and management of a *fund* in Part 3.

Clause 5 A *management company* shall administer and manage a fund with responsibility, due care and loyalty for the interest of the unitholders including acting in compliance with the law, the fund project, the commitment between the unitholders and the *management company* and the resolution of the unitholders.

Clause 6 A *management company* shall establish a system for the administration and the management of a *fund* which covers at least the following matters:

- (1) the selection and supervision of the personnel involved in the operation of the *fund* to ensure that they have suitable knowledge and capability for the administration and management of the *fund*;
- (2) the analysis and feasibility study on the establishment of the *fund*, including due diligence on the *infrastructure asset* to be acquired, and the disclosure of accurate and sufficient information related to the establishment of the *fund* and the *infrastructure asset* for investors' investment decision making;
- (3) the monitoring and management of risks related to the *infrastructure asset* to comply with the fund project and to protect the interest of the unitholders.

Clause 7 The SEC Office may prescribe a guideline in detail for the purpose of compliance with the rules in this Notification and a *management company* having acted in accordance with such guideline shall be deemed to have complied with the rules prescribed herein.

Part 1
**Application for Approval and Granting of Approval for
 the Establishment of a Fund**

Clause 8 A *management company* wishing to establish a *fund* shall comply with the following rules:

- (1) Application for Approval for the Establishment of a Fund in Chapter 1;
- (2) Post-approval Proceeding in the following matters in Chapter 2;
 - (a) General Provisions in Part 1;
 - (b) Allotment and Offer for Sale of Units of the Fund in Part 2; and
 - (c) Investment in Infrastructure Asset in Part 4.

In the case where the approval for the establishment of a fund is terminated under the rules in Division 3 of Chapter 2, the *management company* shall proceed in accordance with such rules stipulated therein.

Chapter 1
Requirements on the Application for Approval for the Establishment of a Fund

Division 1
Features of the Fund to be Approved

Clause 9 The documents of the fund applying for approval of establishment shall contain the stipulations indicating the features of the fund as follows:

- (1) being a close-ended fund except when the redemption is clearly specified in the fund project provided that the management company is able to show that such redemption will not affect the fund's viability;
- (2)* having the term, infrastructure fund, at the end of its name and shall also contain a term specifying the category of the *infrastructure business* to be invested;
- (3)¹¹ having a minimum capital of two billion baht and the policy to invest in infrastructure assets with a total value of not less than one thousand and five hundred million baht. In case of investing in multi-infrastructure businesses, the investment value of each business shall not be less than one billion baht except in the following cases whereby the investment value of each business may be less than one billion baht:

* This Clause applies to the naming of the *fund* in Thai.

¹¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 49/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 12)* dated 6 August 2018 (effective on 1 September 2018).

(a) investment in an electricity generating business
 (b) investment in the business under Clause 1(4)(l) with the investment value of each business within the multi-infrastructure businesses being not less than five hundred million baht; however, such investment value does not apply to electricity generating business.

(4) having units of the fund with an equal par value. In case of unit classification, the rules prescribed under Clause 11 shall apply;

(5)⁶ having the policy to invest mainly in the *infrastructure asset* of an *infrastructure business* that is operated for the common interest of the public in Thailand. In this regard, it shall not appear that an agreement to invest in *infrastructure assets* will be made with any person having the characteristics under Clause 11/1.

The infrastructure business that is operated for the common interest of the public in Thailand under Paragraph 1 shall include any business having any of the following characteristics:

(a) distributing products or providing services to the general public, either directly or indirectly, through other infrastructure business operators;

(b) being an *infrastructure business* whose operation generates benefits to the general public indirectly in the areas of health, environment, life safety and asset protection;

(c) distributing products or providing services to the *state* entirely;

(d) selling products or providing services, either entirely or partially, to a private sector whereby such sale of products or provision of services is not monopolized to any one business operator or a group of business operators. In this regard, at the time of application, the said sale of products or provision of services is not more than one-third of the maximum capacity of the *infrastructure business*, unless it can be demonstrated that an excess of such proportion is in accordance with the nature of the industry of such infrastructure business whereby there are a few buyers of products or users of services, and that there is no discrimination against other product buyers or service users.

A person with one or more of the following relationships shall be deemed a part of the *common person group* of the private sector in Paragraph 1;

1. a natural person or juristic person holding the shares of, or partnership in, the private operator, either directly or indirectly, more than thirty percent of the outstanding shares or the total partnership of such private operator;

2. a juristic person having the person under 1 in the *common person group*;

3. the spouse or minor child of the person under 1.

(5/1)¹ having specified the *infrastructure asset* to be invested by the fund at the time of filing the application. In this regard, the management company shall also proceed as follows:

(a) conduct a due diligence on the *infrastructure asset* by collaborating with a financial advisor to conduct an analysis of the information related to the *infrastructure asset* or the *infrastructure business* such as financial, legal and technical information, and give an opinion that the *infrastructure business* to be invested meet the following criteria:

⁶ Amended by the Notification of the Capital Market Supervisory Board No. Tor Nor. 60/2558 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2) dated 17 August 2012 (effective on 1 September 2012).

¹ Amended by the Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8) dated 18 August 2016 (effective on 16 September 2016).

1. being appropriate for the investment of the general investors and having the potential to generate income to the fund continuously;

2. being supported by documents evidencing the ownership or rights or agreements that are complete, clear and enforceable by law and sufficient for the fund to operate or to procure the benefit upon.

(b) arrange for an appraisal on the **infrastructure asset** in accordance with the rules in Clause 12;

(c) in case of the infrastructure asset to be invested being the right to receive future income or the right under the income sharing agreement, require the infrastructure operator who is the contracting party to set up a mechanism for the **management company** or its delegate to examine or verify the correctness of the portion of income the **fund** received under the agreement and to submit reports or relevant information to the **management company** for the purpose of tracing and verifying the correctness of the portion received

(6) if the payment for the **infrastructure asset** will be made by the **fund** in installments, the stipulation must be specified that **fund** shall invest the money reserved for the consecutive payments in the assets under Clause 46(1) (2) (3) (4) (5) or (6);

(7)⁷ if the fund has a policy to borrow money from other parties or to create any encumbrances on the fund's asset, the stipulations shall be prescribed as following rules;:

(a) the money borrowing or creation of encumbrances on behalf of the fund shall be prescribed in compliance with the rules in the Notification concerning Money Borrowing on Behalf of the Fund and the Creation of Encumbrance on the Infrastructure Asset;

(b) if the fund invests in an infrastructure asset in the form of a company's shares under Clause 1(3)(e), there shall be a supervisory mechanism causing any money borrowing or creation of any encumbrance of the company to comply with the rules governing the fund, except for the rules related to the debt-to-equity ratio, which may apply specifically to the fund.

(8) having the objective to have the units sold to the general investors listed on the Stock Exchange;

(9) the fund project and the commitment between unitholders and the **management company** contain the stipulations to support the operation of the **fund** after the establishment which shall be in compliance with Part 2, the *Notification concerning Details of the Fund Project of an Infrastructure Fund* and the *Notification concerning the Commitment between the Unitholders and the Management Company*.

Clause 10 A **management company** shall show that the fund project applied for an approval for establishment contains the following additional features:

(1) if the **infrastructure asset** to be invested is wholly a **brownfield project**, the **management company** shall offer all units to the public;

(2) if not more than thirty percent of the asset value of the **infrastructure asset** to be invested is a **greenfield project** and the units are classified, the following conditions shall apply:

(a) the class to be offered to the public shall not be riskier than the units of the fund that invest in assets of a project in which thirty per cent of the net asset value is a greenfield project and has no classification of units.;

⁷ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8)* dated 18 August 2016 (effective on 16 September 2016).

(b) the class to be specifically offered to major investors shall not exceed fifty percent of the total outstanding unit value of the fund or not exceed two times the value of the greenfield part of the project, whichever is lesser, and if there is a class of units that will receive the returns or the reimbursement of capital later than other classes, the said class shall be offered specifically to major investors only;

(3) if the fund will invest in a project in which more than thirty per cent of the net asset value is a greenfield project the management company shall offer total units to major investors only;

(4) In case of the units offered to major investors under (2)(b) or (3), the additional stipulations shall be specified as follows:

(a) during the period in which the infrastructure business is a greenfield project:

1. the management company shall not list the units sold to major investor on the exchange;
2. the management company or the registrar shall not register the unit transfer in 1. made to any person other than a major investor unless the units were acquired through inheritance.

(b) when the infrastructure asset is completely developed, the management company shall proceed as necessary to allot all units to the general investors and list all units on the exchange within three years from the date of completion unless an exemption is granted by the SEC Office.

The funds investing in a greenfield project under (2) and (3) of Paragraph 1 shall include the following funds:

- (1) the funds investing in multiple infrastructure assets in which certain projects are greenfield projects; or
- (2) the funds investing in a single infrastructure asset that the development plan of which is divided into phases and certain phase is not completely developed.

Clause 11 The classification of units shall be under the following rules:

- (1) the same class of units shall have equal rights and benefits;
- (2) different class of units may differ in the rights and benefits provided for the unitholders in the following cases:

- (a)³ the nature and conditions of the return distribution or the reimbursement of capital to the unitholders;
- (b) fees or expenses collected from the unitholders;
- (c) any other cases approved by the SEC Office, provided that, in applying for such approval, the management company shall prove that the classification of units is practicable and that it has considered the benefits of all unitholders including the impact on each class of unitholders.

Clause 11/1⁶ A fund shall not enter into a contract to invest in an infrastructure asset with a person having the following characteristics if such person or other persons controllable by such person will be involved in the management and administration of the fund. In the case where such person is a company whose shares are listed on the Stock

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

⁶ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 60/2558 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 7)* dated 13 July 2015 (effective on 16 August 2015).

Exchange, only the characteristics under (1)(a) shall apply:

(1) within a period of five years prior to the filing date of an application for an approval to establish a fund, such person shall not have any of the following characteristics:

(a) having a record of contravening a regulation or condition related to securities offering in a significant matter;

(b) having been rejected by the SEC Office regarding an application for an offer for sale of newly issued shares due to a significant suspicious ground regarding management mechanism in any of the following manners:

1. having a possibility to be unable to treat shareholders fairly by giving benefits to any group of shareholders, which will create an advantage over other shareholders or give inappropriately more benefits than other shareholders;

2. being unlikely to be able to protect shareholders' rights by allowing any person to receive financial gain beyond what should be received normally or by causing the company to lose a benefit that should have been received.

(c) having an application for an offer for sale of newly issued shares rejected by the SEC Office on a suspicious ground related to disclosure of information that was incomplete, insufficient for making an investment decision, or that misled investors in a manner of concealing or disguise or making up non-existing facts in material transactions or operation.

(d) having withdrawn an application for an offer for sale of newly issued shares without a clarification of the suspicious grounds under (b) or (c) to the SEC Office or with a clarification that does not contain facts or reasonable ground for refuting the suspicious grounds under (b) or (c).

(2) within a period of ten years prior to the filing date of the application for an approval to establish a fund, such person has been sentenced by a final judgement in an offense concerning property, only for a cause arising from a deceitful, fraudulent or dishonest act that results in widespread damage, either under Thai or foreign laws;

(3) being currently subject to a criminal complaint or legal prosecution for an offense concerning property by a relevant agency, only for a cause arising from a deceitful, fraudulent or dishonest act that results in widespread damage, either under Thai or foreign laws;

(4) being a person subject to a suspicious ground of being arranged for the person with the characteristics under (1)(2) or (3) to avoid compliance with the regulations for consideration under (1)(2) or (3) imposed by the SEC Office.

The provisions under Paragraph 1(1) and (2), as the case may be, shall not apply to such person having the characteristics under Paragraph 1(1) or (2) if the management company can demonstrate to the SEC Office that such person has rectified the cause, work system, management structure and operating control, which has caused such person to have the characteristics under Paragraph 1(1) or (2).

Clause 12⁷ The infrastructure asset to be acquired by the fund shall be appraised under the following rules:

(1) for the infrastructure asset under Clause 1(3) (a)(b)(c) or (d):

(a) the appraiser shall be a juristic person with experience or expertise in appraisal of infrastructure assets;

⁷ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8)* dated 18 August 2016 (effective on 16 September 2016).

(b) the appraisal is conducted in full where the instruments of rights have been examined and such appraisal is conducted for public purposes for the disclosure of information to the investors;

(c) the appraisal on the infrastructure asset is conducted under the following rules:

1. conducted not more than one year prior to the acquisition of the said asset;

2. if the value of the asset is more than fifty million baht, the appraisal shall be conducted by at least one appraiser;

3. if the acquisition of the infrastructure asset is a transaction to which a connected person is a party, the appraisal shall be conducted by at least two appraisers.

(2) for the infrastructure asset being shares issued by a company under Clause 1(3)(e), the appraisal of the infrastructure asset shall be conducted on the fund and the company issuing such shares in the following manners:

(a) the appraisal on the fund shall comply with the rules under (1) by considering the tax burden of the company and other factors that may affect the price of the infrastructure asset invested indirectly by the fund;

(b) the appraisal on the company shall involve an appraisal of infrastructure assets invested by the company in accordance with the rules under (1).

(3) for the infrastructure asset being debt instrument or agreements under Clause 1(3)(f) or in the case where the company under Clause 1(3)(e) also invests in other assets, the appraisal shall comply with the following rules:

(a) the fair value of the investment shall comply with the rule related to the determination of the fair value of an investment specified by the association, mutatis mutandis;

(b) in case the rule under (a) does not govern the determination of the fair value of any asset, a value that follows an academic principle that is recognized or complies international standards shall be used.

Clause 13 In case the fund applied for the establishment is investing in an infrastructure asset which is the right to receive the future income or the right under the future income sharing agreement under Clause 1(3) (c) and the fund is not the sole beneficiary to the total future income; the management company shall show that an analysis has been done on each class of unitholders' stake in comparison to the creditor or other parties' rights in that future income, and clearly disclose the said analysis and legal opinion on the matter in the draft prospectus submitted with the application for the fund's establishment.

Division 2

Application Submission and the Approval

Clause 14 The management company wishing to apply for an approval for the establishment of a fund shall submit an application in writing including the following supporting documents prepared in compliance with in the rules in Clause 15:

(1) the fund project and supporting documents as follows:

(a) the summary of the draft acquisition agreement for the infrastructure asset;

(b) the appraisal report on the infrastructure asset that the fund will invest prepared in accordance with Clause 12;

(c) the document stating the opinions of the management company and the financial advisor on the reasonableness of the appraisal report in (b) whereby if the management company or the financial advisor also prepares a financial forecast on the infrastructure business showing the base case analysis and sensitivity analysis, the management company or the financial advisor, as the case may be, shall explain the differences between the appraisal report in (b) and such financial forecast (if any) as well;

(d) the opinion of an independent specialist on the technology used in the infrastructure business (technological feasibility) if that technology has never been adopted in Thailand or is an advanced technology that requires a particular expertise. The said opinion shall state the details, advantages and disadvantages of such technology as well as examples of other business using such technology (if any);

(e) the documents stating whether or not the infrastructure business entering into transactions with the fund has the duty to comply with the *Law on the Private Investment in State Undertakings*. If the infrastructure business has such duty, the management company shall state the procedures already undertaken and attach a letter from the infrastructure business to be invested by the fund or from the regulating body of that infrastructure business certifying that the business has complied with the said law;

(f)¹ other documents or evidence showing that the infrastructure asset to be invested by the fund has the characteristics as specified under this Notification.

(2) the draft commitment between the unitholders and the management company;

(3) the draft agreement appointing the fund supervisor stipulating the following minimum duties of the fund supervisor:

(a) the duty to strictly check and balance the management of the fund by the management company with loyalty by applying professional knowledge for the best interest of the fund and unitholders as a whole;

(b) the duties as specified in the *Securities and Exchange Act B.E. 2535 (1992)* and the notifications relating to the establishment and management of the infrastructure funds;

(4)³ draft prospectus that may not contain information on the unit offering;

(5)⁵ other evidentiary documentation as specified in the *Licensing Manual for the Public*.

Clause 15 The submission of application to establish a fund shall be in compliance with the following:

(1) the details of the fund project and draft prospectus shall be jointly prepared by a financial advisor capable to express opinions independently from the following persons:

(a) the persons who will sell, transfer, lease or grant the rights in the

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 40/2555 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2)* dated 17 August 2012 (effective on 1 September 2012).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 38/2558 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 6)* dated 10 July 2015 (effective on 20 July 2015).

infrastructure asset to the fund;

(b) the common person group of (a).

(2) the application and supporting documents shall be signed by the following persons to certify the correctness and completeness of information where each of them is concerned:

(a) the directors authorized to sign on behalf of the management company;

(b) the directors authorized to sign on behalf of the financial advisor and the supervisor of the financial advisor;

(c) the directors authorized to sign on behalf of the company that prepares the appraisal report under Clause 14(1) (b);

(d) the persons who will sell, transfer, lease or grant the rights in the infrastructure asset to the fund.

Clause 16⁵ The applicant for approval of establishment of a fund shall pay the application fee to the SEC Office when the SEC Office has received the application together with accurate and complete evidentiary documentation according to the Licensing Manual for the Public. In this regard, the application fee shall be in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Fees for Filing of Registration Statement, Registration and other Applications*.

Clause 17⁵ *Repealed.*

Clause 18⁵ The SEC Office shall notify the result of the consideration on the application for the establishment of the fund within one hundred and sixty days from the date when the SEC Office receives accurate and complete the application and evidentiary documentation according to the Licensing Manual for the Public.

In the case where the applicant wishes to request a waiver of the rules under this Notification, the applicant shall submit a request for the waiver together with evidentiary documentation to the SEC Office within thirty days from the filing date of the application by following the procedure and method specified in the Licensing Manual for the Public unless the SEC Office accepts the request after the specified period has ended on necessary and appropriate ground. In this regard, the SEC Office shall complete the consideration of the request for the waiver within the same period for considering the application for approval of the establishment of the fund.

Division 3

Power of the SEC Office Related to the Approval

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 38/2558 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 6)* dated 10 July 2015 (effective on 20 July 2015).

⁵ Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 38/2558 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 6)* dated 10 July 2015 (effective on 20 July 2015).

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 38/2558 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 6)* dated 10 July 2015 (effective on 20 July 2015).

Clause 19 The fund to be approved shall be in accordance with the rules in this Notification and the following additional rules:

(1) the information, provisions or agreements in the application for approval of the establishment of the fund and supporting documents shall be in accordance with the law relating to securities and exchange as well as the notifications, regulations or orders issued under the said law and shall not contain anything contrasting with such rules;

(2) the management company is able to show that the establishment of such fund is in the best interest of the unitholders, and that the policy to generate income is fair and does not take advantages of unitholders;

(3) the management company submitting the application has not been ordered to temporarily suspend its submission of application for the approval on an establishment of the fund.

Clause 20 If any of the following circumstance arises and constitutes a reasonable doubt, the Office may not grant the approval on the establishment of the fund:

(1) the fund filed for the approval on the establishment has features or form that are in accordance with the rules or conditions set forth in this Notification, but the circumstances led to believe that the intentions for or the substances of such establishment are to avoid the provisions of the law related to securities and exchange or this Notification;

(2) the establishment of the fund may be contrast to the public policy or the government's policy;

(2/1)¹ the fund submitted for the approval appears to serve mainly the interest of a single person or a single group of persons;

(3) the establishment of the fund may cause an impact on the overall confidence in the Thai capital market or;

(4) the establishment of the fund may cause damage to the investors or may deprive the investors of a fair treatment or the investors may not receive correct and sufficient information to make an informed investment decision.

Clause 21 Provided that one of the following conditions applies, the Office may opt to exempt the application of any rules under this Notification on the application or not apply the conditions under this Notification on such application:

(1) it is clear that the rules or conditions to be exempted is insignificant to the consideration on the approval in that specific case and that the benefit to be gained does not worth the cost to be incurred in complying with the said rules or conditions;

(2) the management company is subject to restrictions under other laws incapacitating the management company from complying with the rules and conditions to be exempted;

(3) the management company has other measures that are sufficient and may substitute the compliance under the rules or conditions to be exempted.

The exemption to be granted under Paragraph 1 shall take into account the appropriateness and adequacy of the information provided for the investors to make an investment decision and investor protection measures. In this regard, the Office may also specify conditions for the management company to comply with.

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 40/2555 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2)* dated 17 August 2012 (effective on 1 September 2012).

Clause 22⁵ *Repealed.*

Division 4³

Disclosure of Information on the Establishment and Management of the Fund

Clause 22/1 Upon the submission of the application to establish the fund and the relevant supporting documents under Clause 14, the management company shall disclose the information having the content identical to the fund project and the latest draft prospectus to the investors via the Office's electronic transmission system provided on the Office's website.

Clause 22/2 The information on the offering distributed through an advertisement shall be correct and not misleading. In this regard, the management company shall also comply with the notifications relating to the advertisement for the promotion of the sales of units.

Chapter 2

Process upon Receiving the Approval to Establish the Fund

Division 1

General Provisions

Clause 23 The management company granted the approval to establish the fund shall proceed as follows:

(1) prepare the commitment between the unitholders and the management company, the fund project, the agreement appointing the fund supervisor and the prospectus having substantial information is not different from the ones filed with the Office;

(2) ensure that the fund has the features not different from the substantial features most currently disclosed to the Office throughout the life of the fund. In case a change is made to the features of the fund, the management company shall ensure that the fund are in accordance with the rules in this Part;

(3) arrange for the listing of the units offered to the public within thirty days from the date of the asset registration or from the closing date of the subsequent offering of units to increase the fund's capital, as the case may be.

Clause 24 The management company shall ensure that the commitment between the unitholders and the management company and the fund project comply with the law on securities and exchange as well as the notifications, regulations and orders issued

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 38/2558 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 6)* dated 10 July 2015 (effective on 20 July 2015).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

under the said law. If the said commitment or the fund project contains anything contradicting to any of the rules prescribed in the said law, notifications, regulations or orders, the management company shall make an amendment to the said commitment or the fund project without any delay.

Division 2

Allotting and Offering for Sale of the Fund Units

Clause 24/1² In this Division:

“**listed company**” means a company whose shares are listed in the stock exchange of Thailand;

“**subsidiary company**” means the subsidiary company according to the *Notification of the Securities and Exchange Commission concerning Determination of Definitions of the Terms Used in the Notifications concerning Issuance and Offer for Sale of Securities*;

“**director**” means a director of a listed company;

“**executive**” means the manager, the next four executives succeeding the manager, and the persons holding equivalent positions to the fourth executive;

“**connected person**” means the connected person according to the Notification of the Capital Market Supervisory Board issued under Section 89/1 in the part related to the definition of persons with a relation;

“**close relatives**” means the close relatives according to the Notification of the Capital Market Supervisory Board issued under Section 89/1;

“**major shareholder**” means the major shareholders that are deemed to be the persons with a relation under the rules of Notification of the Capital Market Supervisory Board issued under Section 89/1.

Clause 25 In allotting the units, the management company shall proceed as follows:

(1) apply the allotment procedure that avails all subscribers a fair and equal opportunity.

“The allotment procedure that avails all subscribers a fair and equal opportunity” in Paragraph 1 means the procedure in which the underwriter or the management company specifies the subscription board lot and equally allot one board lot to every subscriber until all units offered are allotted, or other procedures approved by the SEC Office;

(2) allot the units to the subscriber under the rules in Clause 25/1, Clause 25/3, Clause 26, Clause 27, Clause 28 and Clause 29.

The provision under (1) of Paragraph 1 shall not apply to the following allotments:

(1) the allotment of units offered specifically to major investors; or
 (2) the allotment of units segregated for the following persons and disclosed in the prospectus:

(a) the person qualified as a special subscriber under Clause 25/2;

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

(b) the persons who will sell, transfer, lease or grant the rights in the infrastructure asset to the fund including the common person group of the same;

(c) the common shareholders of the following listed companies who will be allotted the units proportionally to their shareholdings:

1. the listed company that will be selling, transferring, leasing or granting the rights in the infrastructure asset to the fund;

2. the listed company whose subsidiary company will be selling, transferring, leasing or granting the rights in the infrastructure asset to the fund.

(3)⁹ the allotment of the offered units at the whole amount to the unitholders in proportion of their existing unitholding and in consideration of full payment for valued offered;

(4)⁹ the allotment of the offered units in a general case under the condition that the buyers shall be the unitholders of the fund and the subscription amount shall not exceed the unitholding proportion and such offer for sale is in accordance with the resolution of the unitholders' meeting whereby the units shall be offered for sale to every unitholder equally, and shall not be offered for sale to any unitholder who will cause the fund or the management company to have duties under foreign law.

Clause 25/1² If the management company wishes to allot units to the common shareholders of the listed company in (2)(c) of Paragraph 2 in Clause 25, the management company shall proceed as follows:

(1) the total units to be allotted to such shareholders shall not be more than fifty percent of outstanding units or the amount allotted to general investors, whichever is lesser. Such amount shall include the units allotted to the following persons:

(a) the listed company that will be selling, transferring, leasing or granting the rights in the infrastructure asset to the fund;

(b) the listed company whose subsidiary company will be selling, transferring, leasing or granting the rights in the infrastructure asset to the fund;

(c) the subsidiary of a listed company that will be selling, transferring, leasing or granting the rights in the infrastructure asset to the fund.

(2) the common shareholders to be allotted the units shall not be a director or an executive of the listed company, or a related person or close relatives of the same;

(3) if the common shareholder to be allotted the units is a major shareholder, the units shall be allotted proportionally to their existing shareholding but not more than ten percent of the total voting shares of that listed company.

If the common shareholder to be allotted the units operates a custodian business and holds shares in its name for the depositors, the management company shall consider the shareholding of each depositor for the compliance under (2) and (3) of Paragraph 1.

⁹ Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 32/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 10)* dated 23 March 2018 (effective on 1 April 2018).

⁹ Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 32/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 10)* dated 23 March 2018 (effective on 1 April 2018).

² Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

Clause 25/2² For the compliance under (2)(a) of Paragraph 2 in Clause 25, the following persons for whom the prospectus has specified the allotment procedure separated from the general subscribers shall be qualified as a special subscriber:

(1)⁸ the institutional investors under the *Notification of the Securities and Exchange Commission No. Kor Jor. 4/2560 Re: Determination of the Definitions of Institutional Investor, Ultra-high Net Worth Investor and High Net Worth Investor* dated 8 February 2017, excluding the investors under Clause 4(10) (18) (22) (23) (24) and (25) of the said Notification;

(2) the private funds for which a securities company manages the money of (1) or (3) to (10);

(3) the government sector and state enterprises under the law on budgeting or other juristic persons incorporated by a specific law;

(4) the Thai Red Cross or other foundations for the public interest;

(5) the savings cooperative or a federation of cooperatives;

(6) the international financial institutes to which Thailand is a member;

(7) the collective investment schemes set up under foreign laws and offered the units publicly to the investors;

(8) the foreign investors having the same characteristics as the following investors:

(a) the institutional investors in (1) but not including the finance companies, credit foncier, mutual funds, derivatives business operators under the law on derivatives trading and futures business operators under the law on agricultural futures trading;

(b) the investors in (3);

(c) the private funds of (a) or (b).

(9) the juristic persons that the investors in (1) to (8) hold shares in aggregate more than seventy five percent of the total voting shares;

(10) other types of investors as the Office may prescribe.

Clause 25/3² If the management company has separated the units to be offered to the persons in (2)(a) or (b) of Paragraph 2 in Clause 25 from the units to be offered to the general investors, the management company shall not allot the units offered to the general investors to the persons in (2)(a) or (b) of Paragraph 2 in Clause 25, except for any remaining units from general investors' subscription which may be allotted to the persons in (2)(a) or (b) of Paragraph 2 in Clause 25 consecutively.

² Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

⁸ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 9)* dated 19 February 2018 (effective on 16 March 2018).

² Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

Clause 25/4³ In allotting the units classified under Clause 11(2)(a) whereby the returns or reimbursement of capital will be paid in order to the unitholders of different unit class; the management company shall allot the units in the class ranked in the first order in accordance with the following rules:

- (1) allot units to the general investors or special subscribers who are the persons under Paragraph 2(1)(2)(3) and (4) of Clause 27 only;
- (2) in case of having excessive units from the subscription of the subscribers under (1), the management company may allot units to other subscribers;
- (3) the management company shall not allot the units to the creditor of the persons who will sell, transfer, lease or grant the rights in the infrastructure asset to the fund including the common person group of such person.

Clause 26 The management company may allot the units of the fund to a person or the common person group not exceeding the following:

- (1) one-third of the outstanding units of the fund and;
- (2) fifty percent of the outstanding units of each class of units, if there is a classification of units.

³If there is more than one person to sell, transfer, lease or grant the rights in the infrastructure asset to the fund, the rate specified in Paragraph 1(1) shall be the accumulation of all such persons.

Clause 27 The management company may allot the units to the exempted persons exceeding the specified rate in Clause 26(1), but not exceeding fifty percent of outstanding units of the fund.

The exempted persons under Paragraph 1 means:

- (1) the Government Pension Fund;
- (2) the provident funds;
- (3) the mutual funds for general investors;
- (4) the Social Security Fund;
- (5) the juristic persons established under Thai law that is not subject to corporate income taxes.

Clause 28 Clause 26 shall not be applicable to the underwriters receiving the units in the following manners:

- (1) receiving the units under an underwriting agreement and;
- (2) the receipt of units is under the following conditions:
 - (a) the underwriter shall hold the portion which exceeds the specified rate in Clause 26 no longer than one year from the date of receipt;
 - (b) during the period of one year from the date of receipt, the underwriter shall be restricted from exercising its voting right on the portion that exceeds the following rates:

1. fifty percent of the outstanding units of the fund and;
2. fifty percent of the outstanding units of each class of units if there is

³ Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

a classification of units.

(c) if the unit holding does not comply with (a), the underwriter will be restricted from receiving dividends and exercising voting rights, on the portion that exceeds the specified rate in Clause 26.

Clause 29 If the laws, regulations or requirements related to the infrastructure business prescribe a foreign investment limit, the management company shall allot the units to foreign investors in compliance with the said laws, regulations or requirements.

If the fund is investing in multiple infrastructure assets, and the laws, regulations or requirements related to each infrastructure business has prescribed different foreign investment limits, the management company shall allot the units in compliance with the lowest limit prescribed by the said laws, regulations or requirements.

Clause 30³ In offering the units of the fund, the management company shall proceed as follows:

(1) deliver or distribute the prospectus which contains correct, complete, sufficient and not misleading information to the prospective investors. The management company may offer the units for sale upon satisfying the conditions in (2);

(2) the offering of the units may commence upon complete compliance with the following rules:

(a) fourteen days from the date on which the management company has commenced the disclosure of the information under Division 4 of Chapter 1 in this Part had lapsed; In this regard, such disclosure may not contain the information on the offer for sale of units or immaterial facts approved for amendment by the SEC Office;

(b) the management company has completely filled in the information on the offering in the prospectus and notified the Office of the said action.

(3) if the management company wishes to appoint a selling agent to underwrite the units of the fund, the selling agent to be appointed shall not be in a common person group with the persons who will sell, transfer, lease or grant the rights in the infrastructure asset to be invested by the fund;

(4) if the units are publicly offered, the management company shall arrange widespread dissemination of the information on the offering to the general public as well.

Clause 31 If the management company wishes to terminate the establishment of the fund during the period of the initial public offering, provided that it was disclosed in the prospectus so, the management company may terminate the offering.

The management company shall report to the Office such termination under Paragraph 1 within seven days from the date of termination. The approval of the fund's establishment shall be terminated on the date the Office is notified.

The management company shall return the subscription money and other benefits accrued upon the proceeds received from the offering to the subscribers proportionately to subscription money received within fourteen days from the date on which the approval was terminated under Paragraph 2. If the management company fails to return the subscription money and such other benefits within the given time for any causes

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

accountable to the management company, the management company shall pay an interest at no less than seven and a half percent per year calculated from the due date to the date the said return is made.

Clause 32 Upon acknowledging that any person or a common person group holds the units, at any time after the offering, exceeding the specified rate in Clause 26, Clause 27, and Clause 28, as the case may be; the management company shall proceed as follows:

- (1) report to the Office within five working days from the date of acknowledgement or the date on which it should have acknowledged so;
- (2) notify the person or the common person group to sell the units held in excess of Clause 26, Clause 27 and Clause 28, as the case may be.

Clause 33 The management company shall undertake as necessary to ensure that the foreign holding, at any time after the offering of the units, is in accordance with the rate prescribed in Clause 29.

Such undertaking under Paragraph 1, shall include the following:

- (1) the arrangement for a system able to control the foreign holding or the appointment of a registrar with the said system;
- (2) the arrangement for requirements or agreements that will allow the management company or the registrar, as the case may be, to deny registering a foreign unitholder if such registration would exceed the foreign holding limit set out in Clause 29.

In this regard, the arrangement for the registrar shall be made in compliance with the *Notification of the Office of the Securities and Exchange Commission concerning Rules and Procedures for Preparing the Register of Unitholders*.

Division 3

Termination of the Approval on the Fund's Establishment

Clause 34 The approval on the fund's establishment shall be terminated if the management company did not commence the offering of the units within one year from the date such approval was given.

Clause 35 The approval on the fund's establishment shall be terminated if, upon the closing of the offering and before the registration of the fund; any of the following occurs:

- (1) the following funds having less than five hundred unitholders;
 - (a) the funds with the policy to invest only in brownfield projects;
 - (b) the funds with the policy to invest in greenfield projects not more than thirty percent of its net asset value.
- (2) the funds with the policy to invest in greenfield projects more than thirty percent of its net asset value having less than thirty five unitholders;
- (3) the value of the outstanding units is less than two billion baht;
- (4) the value of the outstanding units in accumulation with the loans (if any) is insufficient to invest in the infrastructure asset prescribed in the fund project;
- (5) the allotment of the units to any person or a common person group was not in compliance with Clause 26, Clause 27, Clause 28 or Clause 29.

The management company shall notify any such occurrence under Paragraph 1

to the Office within fifteen days from the closing date and return the subscription money and other benefits accrued upon the proceeds received from the offering to the subscribers proportionately to subscription money received within fourteen days from the closing date. If the management company fails to return the subscription money and such other benefits within the given time for any causes accountable to the management company, the management company shall pay an interest at no less than seven and a half percent per year calculated from the due date to the date the said return is made.

The calculation for the value of the outstanding units under Paragraph 1 shall be based on the par value of the units.

Clause 35/1 The SEC Office may order the management company to correct or disclose any information or suspend the offering of units within a given period or revoke the approval given on the establishment of the fund if the facts or circumstances underlying its decision to approve was:

- (1) false;
- (2) absent of material information that should have been disclosed and thus may damage the subscribers' interests;
- (3) materially incorrect, or, materially changed due to an occurrence of an event which may affect the subscribers' decision to invest;
- (4) due to an occurrence of an event; the facts or circumstances has changed and if discovered before the approval, the Office may not have approved the establishment.

Clause 36 The SEC Office may revoke the approval given on the establishment of the fund if:

- (1) any change is made to the fund project or the commitment between the unitholders and the management company against the provisions of this Notification;
- (2) any process upon receiving the approval is taken not in compliance with Chapter 2 of this Part;
- (3) any process taken is not in compliance with the supporting stipulations for the operation of the fund upon the establishment in Part 2;
- (4) the investment in or income generating activities of the infrastructure asset do not comply with the investment plan prescribed in the fund project and causes significant impact to the operation of the fund;
- (5) the management of the fund is against or not in compliance with the rules in Part 3.

Clause 37 If the approval for the establishment of the fund is revoked after the offering of the units but before the registration of the fund, the management company shall return the subscription money and other benefits accrued upon the proceeds received from the offering to the subscribers whereby the provision in Paragraph 2 of Clause 35 shall apply, *mutatis mutandis*. However, if the fund has been registered, the management company shall dissolve the fund immediately.

Division 4

Investment in the Infrastructure Asset

Clause 38 The management company shall conclude an agreement to acquire the infrastructure asset which values at least seventy five percent of the fund's asset value

within six months from the date of registration of the fund, except when an exemption is granted by the SEC Office;

Clause 39 The management company shall maintain the investment in the infrastructure asset to accumulatively account for at least seventy five percent of the fund's asset value at the end of the fiscal year, save for the following cases where the management company may not maintain such value:

- (1) when it is the last fiscal year in which the fund will expire;
- (2) when approved by the SEC Office.

Clause 40¹ The calculation of the investment value in the infrastructure asset shall comply with the following rules:

(1) for assets of greenfield projects, the calculation shall be based on the acquisition price and the development costs expected to be incurred by the fund to mature the project;

(2) for assets of brownfield projects, the calculation shall be based on the acquisition price;

(3) If an appraisal is conducted on the infrastructure asset under Clause 44, the calculation shall be based on the latest appraised price adjusted by any acquisition or disposal of infrastructure assets (if any) and amortization of the infrastructure asset (if any) occurred after the latest appraisal.

If the payment for the infrastructure asset will be made in installments and the fund invests the money reserved for subsequent installments in the assets in Clause 46(1) (2) (3) (4) (5) or (6), the management company may include the reserved money in the calculation for the value of the infrastructure asset in Paragraph 1.

Part 2

Supporting stipulations for the Fund's Operation after Establishment

Clause 41 The fund project and the commitment between the unitholders and the management company shall contain the following stipulations for the operation of the fund after the establishment:

(1) the stipulations relating to the additional acquisition and disposal of the infrastructure asset which comply with Clause 42;

(2) the stipulations relating to the income generating activities of the infrastructure asset which comply with Clause 43;

(2/1)⁷ the stipulations relating to money borrowing on behalf of the fund and the creation of any encumbrances on the infrastructure asset (if any) which comply with Clause 43/1;

(3) the stipulations relating to the appraisal of the infrastructure asset which comply with Clause 44;

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 40/2555 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2)* dated 17 August 2012 (effective on 1 September 2012).

⁷ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8)* dated 18 August 2016 (effective on 16 September 2016).

- (4) the stipulations relating to the investment in other types of assets which comply with Clause 45 to Clause 47;
- (5) the stipulations relating to conclusions of transactions between mutual fund and related party which comply with Clause 48;
- (6) the stipulations relating to an increase or decrease of the fund's registered capital which comply with Clause 49 to Clause 54;
- (7) the stipulations relating to the proposals for the resolutions of the unitholders which comply with Clause 55 to Clause 60;
- (7/1)⁸ the stipulations relating to the unitholders' meeting which comply with Clause 60/1;
- (8) the stipulations relating to dividend payment and collection of fees from the fund which comply with Clause 61 and Clause 62;
- (9) the stipulations relating to the restriction on receiving dividends, arrangement of dividend, and unitholders' rights to cast votes which comply with Clause 63;
- (10) the stipulations relating to the dissolution of the fund which comply with Clause 64;
- (11) the stipulations relating to the issuance of unit certificates or documents evidencing the rights in the units which comply with Clause 65;
- (12) other stipulations prescribed by the notification relating to the details of the infrastructure fund project and the notification relating to the commitment between the unitholders and the management company.

⁸The provisions under Paragraph 1(7/1) shall not apply to a fund whose unitholders are all high net worth investors.

Clause 42 The management company shall furnish the fund project with the stipulations for the additional acquisition and disposal of infrastructure assets that comply with the rules in Division 1 of Chapter 1 of Part 1, *mutatis mutandis*, and to also have additional stipulations as follows:

- (1) the additional acquisition or disposal of infrastructure assets value more than one hundred million baht or at least thirty percent of the asset value shall be carried out upon receiving the resolution of unitholders to do so except for:
 - (a)¹ the additional acquisition or disposal of infrastructure assets under an agreement or contract with the state specified in the fund project;
 - (b) the additional acquisition or disposal of infrastructure assets value more than one hundred million baht but less than thirty percent of the asset value approved by the fund supervisor.

The calculation of the infrastructure asset value in Paragraph 1 shall be based on the accumulative investment in each infrastructure business within six months.

- (2) the additional acquisition or disposal of infrastructure assets under (1) shall

⁸ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 23/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 9)* dated 19 February 2018 (effective on 16 March 2018).

⁸ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 23/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 9)* dated 19 February 2018 (effective on 16 March 2018).

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 40/2555 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2)* dated 17 August 2012 (effective on 1 September 2012).

include the acquisitions or disposals carried out directly by the fund or indirectly through the company of which the fund is the shareholder under Clause 1(3)(e).

Clause 43 The management company shall arrange for the fund project to have the following stipulations concerning the income generating activities of the infrastructure asset:

(1) the fund shall not undertake the infrastructure business itself but shall instead lease out, grant such rights or allow other persons to do so;

(1/1)¹ the fund shall determine the rent, fees or other considerations including the terms and conditions of the income generating agreement in the best interest of the fund as an ordinary person would agree with unrelated counterparty under the same circumstances;

(2) the conclusion, amendment or termination of the income generating agreement which value more than one hundred million baht or at least thirty percent of the net asset value shall be carried out upon receiving the resolution of unitholders to do so except for:

(a) any such conclusion, amendment or termination specified in the fund project;

(b) any such conclusion, amendment or termination of the said agreement which value more than one hundred million baht but less than thirty percent of the net asset value approved by the fund supervisor.

The calculation for the agreement value under (2) of Paragraph 1 shall be based on the value of all agreements transacted within six months.

Clause 43/1⁷ In the case where a fund is intended to be able to borrow money and create any encumbrance on the infrastructure asset, either director or indirectly, through a company whose shareholders are the fund, the fund project shall have the stipulation under the rules concerning such matter as specified in Chapter 1 of Part 1.

Clause 44⁷ The management company shall arrange for the fund project to have the following stipulations concerning the appraisal of the infrastructure assets:

(1) the management company shall arrange for the appraisal of the infrastructure asset under the rules in Clause 12 and the following additional requirements:

(a) the appraisal of the infrastructure asset under Clause 1(3)(a)(b)(c) and (d) shall be conducted every three years from the date of the latest appraisal;

(b) the appraisal of the infrastructure asset shall not be conducted by the same appraiser more than two consecutive times;

(c) upon an occurrence an event or any changes known to the management company that may impact the value of the infrastructure asset, or if requested by the fund supervisor or the fund auditor, the management company shall arrange for an

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 40/2555 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2)* dated 17 August 2012 (effective on 1 September 2012).

⁷ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8)* dated 18 August 2016 (effective on 16 September 2016).

⁷ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8)* dated 18 August 2016 (effective on 16 September 2016).

appraisal on the infrastructure asset without any delay;

(2) if the fund invests in an infrastructure asset in the form of share issued by the companies in Clause 1(3)(e), the management company shall arrange for an appraisal of the infrastructure asset both in the part of the fund and the company issuing such shares, in the following manners:

(a) the appraisal in the part related to the fund shall also consider tax burdens of the company and other factors that may affect the price of the infrastructure asset invested indirectly by the fund;

(b) the appraisal in the part related to the company shall be on the infrastructure business invested by the company in accordance with the rules under (1).

(3) the appraisal of the infrastructure asset in the form of debt instrument or agreement under Clause 1(3)(f) and other assets under Clause 1(3)(e) invested by the fund or the company shall comply with the following rules:

(a) the fair value under the rule related to the determination of fair value of investment issued by the association, *mutatis mutandis*.

(b) in the case where the rule under (a) does not support the determination of fair value of any asset, the value according to an academic principle that is recognized or complies with international standards.

Clause 45 The management company shall arrange for the fund project to have the following stipulations concerning the investment in other assets:

(1) the types of such other assets eligible for investment or possession which is in accordance with Clause 46 and Clause 47;

(2) the ratio of investment in other assets which is in accordance with the rules prescribed in the notifications related to the general mutual fund's investment ratio, *mutatis mutandis*.

Clause 46 In addition to the investment in infrastructure assets, the fund may invest in or possess the following assets:

(1) government bonds;

(2) treasury bonds;

(3) bonds or debentures issued by state enterprises or juristic persons established by specific law having the principal and interest of which fully and unconditionally guaranteed by the Ministry of Finance;

(4) deposits in bank or the Secondary Mortgage Corporation;

(5) certificates of deposit issued by banks or finance companies except for any such certificates with embedded derivatives which shall be approved by the SEC Office prior to investment;

(6) bills of exchange or promissory notes that banks, finance companies, credit fonciers or Financial Institutions Development Funds issued, certified, aval, endorsed a transfer with recourse, or guaranteed. except for any such bills or notes with embedded derivatives which shall be approved by the SEC Office prior to investment;

(7) units or unit warrants of debt instrument funds, or other mutual funds investing in debt instruments or savings;

(8) units of other infrastructure funds;

(9) units of funds in foreign countries, under the following conditions:

(a) such foreign fund is under the supervision of a securities and exchange regulating body which is an ordinary member of the International Organization of Securities and Commission (IOSCO) or the foreign units are traded in an exchange which is a member of World Federation of Exchanges (WFE);

(b) such foreign fund invests in the same type of assets which is eligible for the fund to invest in or possess and;

(c) such foreign fund is established for retail investors.

(10) shares issued by the company that satisfies the following conditions:

(a) the said company invests in the infrastructure assets under Clause 1(3) (a) (b) (c) or (d) collectively not less than seventy five percent of its asset value or having its income generated by the infrastructure assets under Clause 1(3) (a) (b) (c) or (d) collectively not less than seventy five percent of the total income in each fiscal year; |

(b) the said company is not a company under Clause 1(3)(e).

(11) futures contracts for hedging purpose.

Clause 47² The fund may invest in or hold the share that grants management power to its holder (golden share) of the following juristic person not more than one share:

(1) the juristic person who is the lessee, the contractor or the person authorized to operate the infrastructure assets to generate income who also agreed to pay the fund a consideration variable to the income generated by that infrastructure asset;

(2) the juristic person who is the contracting party to the fund's acquisition agreement under Clause 1(3)(c).

Clause 48 The management company shall furnish the fund project with the following stipulations concerning the conclusion of transactions with a related party:

(1) for the transactions of infrastructure assets, the management company shall comply with the notifications specifying requirements on actions that may constitute conflicts of interest in managing a mutual fund and the following additional requirements:

(a) the transaction is based on a fair price;

(b) the transaction in which the interested persons did not take part in the decision making to enter into such transaction;

(c) the expenses incurred in entering into the transaction by the fund are fair and necessary;

(2) the following actions shall be taken upon the management company receiving the resolution of the unitholders to do so;

(a)¹ a transaction with related persons to additionally acquire or dispose of the infrastructure assets worth at least twenty million baht or at least three percent of the fund's net asset value, whichever is higher, except when the management company is obligated so under an agreement with the state as specified in the fund project;

(b) a conclusion, amendment, termination of the agreement on the income generating activities of the infrastructure asset that worth not less than the rate in (a);

(c) an agreement, a consent or a vote allowing the company of which the fund is a shareholder under Clause 1(3) (e) to enter into the transaction in (a) or (b) with a related party.

Clause 49 The management company shall arrange for the fund project to have the following stipulations concerning the increase or decrease of the fund's registered

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 40/2555 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2)* dated 17 August 2012 (effective on 1 September 2012).

capital:

- (1) the increase of registered capital, in compliance with Clause 50;
- (2) the decrease of registered capital, in compliance with Clause 51 to Clause

54.

Clause 50 The management company shall proceed to increase the fund's registered capital as follows:

- (1) obtain the resolution from the unitholders;
- (2) such increase in the fund's registered capital shall not be in contrary to or against the fund project or the law on securities and exchange including notifications, regulations or orders issued under any such law;
- (3) if the increase in the fund's registered capital will be made by way of offering the units to specific unitholders, the increase in the registered capital shall not be objected by any unitholders holding accumulatively more than ten percent of the outstanding units and;
- (4)⁹ obtain an approval from the SEC Office except the unit offering in the following cases:
 - (a) the offering of all newly issued units to the existing unitholders proportionately to their holdings and the payment is made in full by the unitholders;
 - (b) the offering of units in a general case under the condition that the buyers shall be the unitholders of the fund and the subscription amount shall not exceed the unitholding proportion and such offer for sale is in accordance with the resolution of the unitholders' meeting whereby the units shall be offered for sale to every unitholder equally, and shall not be offered for sale to any unitholder who will cause the fund or the management company to have duties under foreign law.
- (5) if the resolution of the unitholders is to offer all newly issued units to the existing unitholders proportionately to their holdings and the management company did not commence the offering with one year from the date such resolution was given, the management company shall obtain another resolution to do so.

Clause 51 The management company may decrease the fund's registered capital if:

- (1) such decrease in the registered capital is according to the plan specified in the fund project;
- (2) the fund has a surplus liquidity after disposing the infrastructure asset and paying the dividend provided that, the fund did not have any retained earnings;
- (3) the fund has non-cash expenses not needed for the calculation of the fund's adjusted net profit;
- (4) resolved by the unitholders to do so.

Clause 52 The management company shall decrease the fund's registered capital immediately if the fund has increased the registered capital to invest in an additional infrastructure asset but could not complete the acquisition for any reason.

⁹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 32/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 10)* dated 23 March 2018 (effective on 1 April 2018).

Clause 53³ *Repealed.*

Clause 54³ The decrease of the fund's registered capital shall also be in compliance with the following rules:

- (1) by reducing the value of the units or reducing the amount of units except when the units are classified and the decrease will not be done concurrently nor equally in which case such decrease shall be done only by reducing the amount of units;
- (2) proportionately reimburse the unitholders existing in the register as of the closing date without deducting that reimbursement from the retained earnings of the fund.

Clause 55 The management company shall furnish the commitment between itself and the unitholders with the following stipulations concerning the proposal for the unitholders' resolution:

- (1) the general requirements in submitting a proposal for a resolution and exercising the voting rights of the unitholders, in compliance with Clause 56;
- (2) the additional requirements for the increase in the fund's registered capital in compliance with Clause 57 and Clause 58;
- (3)³ the additional requirements for the decrease in the fund's capital in compliance with Clause 59;
- (4) the additional requirements for the fund with a classification of units which are in compliance with Clause 60.

Clause 56⁸ The proposals for the unitholders' resolution and the exercise of unitholders' voting rights shall comply with the following stipulations:

- (1) the management company may make such proposal by using any of the following methods:
 - (a) circulating the letter of proposal to the unitholders;
 - (b) convening a unitholders' meeting in accordance with the rules under Clause 60/1;
- (2) the proposals for the unitholders' resolution and the exercise of unitholders' voting rights regarding additional amendment to the fund project shall comply with Section 129 of the *Securities and Exchange Commission B.E. 2535 (1992)*;
- (3) the proposal for the unitholders' resolution and the resolution of the unitholders in cases other than (2) shall comply with the following rules:
 - (a) in exercising the voting rights, each unitholder shall have one vote per one unit held, and the unitholders with the voting rights shall not be the persons under Clause 63(3);

³ Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

⁸ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 23/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 9)* dated 19 February 2018 (effective on 16 March 2018).

(b) in proposing the unitholders' resolution by circulating the letter of proposal to the unitholders, the resolution shall be passed by more than half of the aggregate amount of units held by all unitholders with the voting rights;

(c) in proposing the unitholders' resolution by convening a unitholders' meeting, the resolution shall be passed by more than half of the aggregate amount of units held by the attending unitholders with the voting rights, except the following matters whereby the resolution shall be passed by at least third fourths of the total units held by the attending unitholders with the voting rights:

1. an acquisition or disposal of the infrastructure asset;
2. a transaction between the fund and a connected person;
3. an increase or decrease in the fund's registered capital;
4. a conclusion, amendment or termination of the agreement

concerning the management of the infrastructure asset;

5. an agreement, a consent or a vote allowing the company of which the fund is a shareholder under Clause 1(3)(e) to conclude the transactions under 1, 2, 3 or 4.

The resolution of the unitholders under Paragraph 1(3) shall not apply to any matter subject to specific rules under other notifications and the management company shall arrange for the commitment between the unitholders and the management company to contain stipulations in accordance with such notifications.

Clause 57 The management company shall furnish the commitment between itself and the unitholders with the following stipulations concerning the disclosure of information in the notice for the meeting or the letter of proposal, as the case may be, in proposing to increase the fund's registered capital:

- (1) the objective in increasing the fund's registered capital;
- (2) the amount of the units to be offered, the offering prices, the offering manner and the allotment of the units;
- (3) if the price offered to the investors is lower than the price offered to the unitholders or lower than the market price (if any), the management company shall indicate the reasons for offering to the investors at such price;
- (4) the impact to the unitholders or the fund as a result of the increase in the fund's registered capital for which the management company shall at least indicate the following information:
 - (a) the information related to the impact to the market price of each class of units (price dilution);
 - (b) the impact to the share of profit or voting rights of existing unitholders (control dilution);
 - (c) other information that may impact to the investment decision of the unitholders.

Clause 58 The management company shall furnish the commitment between itself and the unitholders with the following stipulations concerning the disclosure of information in the notice for the meeting or the letter of proposal, as the case may be, in proposing to increase the fund's registered capital in order to acquire an infrastructure asset:

- (1) the characteristics of that infrastructure asset;
- (2) the determination of the price of that infrastructure asset;
- (3) a summary of the appraisal report and substantial assumptions that the appraisal is based on;
- (4) the opinion of the management company on the reasonableness of the assumptions in (3);

(5) a summary of the agreement on the income generating activities of the infrastructure asset and other related draft agreements;

(6) the loan and impact to the unitholders (if any), for instance, sources and amount of loan, assets to be collateralized for the loan, the order of payments to be made to creditors and each class of unitholders.

³The management company may omit to state any of the information in Paragraph 1 if it has considered and reasonably believe in good faith that such disclosure, if made prior to obtaining the unitholders' resolution, will affect the interest of the fund and the unitholders as a whole, provided that the management company shall state the reason for its omission in the notice for the meeting or the letter of proposal, as the case may be. In this regard, the management company shall disclose the information omitted without delay once the omission is no longer necessary.

Clause 59 The management company shall furnish the commitment between itself and the unitholders with the following stipulations concerning the disclosure of information in the notice for the meeting or the letter of proposal, as the case may be, in proposing to decrease the fund's registered capital:

- (1) the reason to decrease the fund's registered capital;
- (2) the amount of registered capital to be decreased and the registered capital per unit decreased at a time;
- (3) the impact on the unitholders or the fund as a result of the decrease in the fund's registered capital.

Clause 60³ If the units are classified, the management company shall furnish the commitment between itself and the unitholders with the stipulations effecting the following rules relating to the proposals for the unitholders' resolution:

- (1) a proposal that would impact every class of unitholders' right and each class is unevenly impacted shall be passed by the majority vote of every class;
- (2) a proposal that would impact the interest of the unitholders in any cases shall be passed by the majority vote of every class;
- (3) a proposal that would impact a certain class of unitholders shall be passed the majority vote of that class.

The proposal for the unitholders' resolution and the voting of the unitholders under Paragraph 1 shall be in accordance with the rules in Clause 55, Clause 56, Clause 57, Clause 58, Clause 59 and Clause 60/1, *mutatis mutandis*.

Clause 60/1⁸ Regarding the unitholders' meeting, the management company shall arrange for the commitment between the unitholders and the management company to contain the stipulations in accordance with the following rules:

- (1) the management company shall convene the following meetings:

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

⁸ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 23/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 9)* dated 19 February 2018 (effective on 16 March 2018).

(a) the annual general unitholders' meeting which shall be convened within four months from the end of the financial year of the fund to report at least the following matters to the unitholders:

1. the management of the fund regarding significant matters and the directions for the future management of the fund;
2. financial and non-financial information of the fund during the past financial year with at least the audited financial statements and the auditor's opinion;
3. the appointment of the auditor of the fund and audit expenses.

In case of a fund having registered its pool of assets as the fund with the SEC Office before 30 April 2018, the management company may specify that the first annual ordinary unitholders' meeting under Paragraph 1 will be convened for the financial year ending on or after 31 December 2018 but no later than 30 December 2019 within four months from the end of such financial year.

(b) an extraordinary unitholders' meeting in any of the following cases:

1. the management company deems appropriate to call for a unitholders' meeting for the benefit of the fund's management;
2. the unitholders holding an aggregate amount of units not less than ten percent of the outstanding units of the fund jointly sign up to send a letter requesting the management company to call for a meeting with clearly stated reason(s) for such request.

The request for the extraordinary unitholders' meeting under 2. of Paragraph 1 shall stipulate that the management company shall convene the meeting within forty-five days from the date of receiving the unitholders' request.

(2) in calling for a unitholders' meeting, the management company shall comply with the following rules:

(a) prepare a notice calling for a unitholders' meeting with sufficient details for the unitholders' decision making with at least information on the methods for convening the meeting and voting, the meeting regulation and the meeting agenda together with details as deemed reasonable, and clearly state the purpose of each matter is for the unitholders' information, approval or consideration, as the case may be, together with the opinion of the management company and the fund supervisor on such matter. In case of proposing for the unitholders' resolution, the opinion regarding possible impact of the resolution on the unitholders shall also be provided;

(b) deliver the notice calling for the unitholders' meeting in advance according to the following periods:

1. fourteen days in case of the unitholders' meeting of the fund whose units are listed on the Stock Exchange, which contains a matter that requires a resolution be passed by at least three fourths of the total units of the attending unitholders with the voting rights;

2. seven days in cases other than 1.

(c) announce the calling for the unitholders' meeting in at least a daily local newspaper for no less than three days prior to the date of the unitholders' meeting.

(3) the quorum shall be in accordance with the following rules:

(a) the quorum for a unitholders' meeting shall comprise at least twenty-five unitholders or half of the total number of unitholders, and with accumulative holding of at least one third of the outstanding units of the fund;

(b) if it appears that after one hour has passed at any unitholders' meeting, the number of the attending unitholders still does not make the quorum as specified in (a), if such meeting is convened according to the unitholders' request under (1)(b) 2., the meeting shall lapse otherwise it shall be re-convene and a new notice calling a meeting shall be delivered to the unitholders at least seven days prior to the second meeting date for which the

quorum will not be required;

(4) the meeting procedure shall comply with the following rules:

(a) the meeting shall follow the procedure and the agenda specified in the notice calling the meeting unless the meeting passes a resolution to change the order of the agenda by at least two thirds of the attending unitholders;

(b) after the meeting has completed the consideration under (a), the unitholders holding the accumulative units of not less than one third of the outstanding units may request the meeting to consider any matter other than the matters specified in the notice calling the meeting;

(c) if the meeting cannot complete the consideration of the matters in order of the agenda under (a) or the matters proposed by the unitholders under (b), as the case may be, and it is necessary to postpone the consideration, the meeting shall specify the venue, date and time of the next meeting and the management company shall deliver a notice calling for the meeting which specifies the venue, date, time and the meeting's agenda to the unitholders at least seven days prior to the meeting date. In this regard, an announcement of the notice calling the meeting shall be published on a newspaper at least three days prior to the meeting date.

In convening the meeting under Paragraph 1, the management company shall arrange for the fund supervisor to attend the meeting by delivering the notice calling the meeting under Paragraph 1(2)(a) to the fund supervisor at the same time of the delivery to the unitholders.

The provisions under Paragraph 1 and Paragraph 2 shall not apply to the cases subject to specific rules in other notifications.

Clause 61² The management company shall furnish the fund project with the following stipulations concerning the dividend payment:

(1) the management company shall pay dividend to the unitholders accumulatively in each fiscal year not less than ninety percent of the net profit adjusted under the rules in Clause 61/1 within ninety days from the end of the fiscal year in which the dividend is paid or the end of the accounting period in which the dividend is paid, as the case may be;

(2) the management company shall not pay any dividend if the fund has any accumulated losses.

Clause 61/1² The adjusted net profit in Clause 61 is the net profit adjusted by the following deductions:

(1) the unrealized gain from the appraisal of the infrastructure asset and other items specified by the Office's guideline so as to match the cash position of the fund;

(2) the reserves set up under Clause 61/2.

Clause 61/2² The management company may set up a reserve for the following purposes:

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

² Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

² Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

(1) the repair, maintenance or improvement of the infrastructure business according to the plan specified in the fund project and the prospectus or as the management company has notified unitholders in advance;

(2) loan or other encumbrance repayment according to the money borrowing policy specified in the fund project and the prospectus or as the management company has notified the unitholders in advance;

(3)³ the payment of dividend to the unitholders of the class in the first order to receive the returns or reimbursement.

If the fund has any non-cash items such as amortized expenses or unrealized loss, the management company may set up the reserve under Paragraph 1 not exceeding the sum of the money incumbent under (1) and (2) in each accounting period less the non-cash expenses.

Clause 62 The management company shall furnish the fund project with the provisions on the fees, other compensations or expenses to be incurred by the fund or the unitholders whereby the expenses charged to the fund by the management company shall be only those necessary resulting directly from the management of the fund.

Clause 63³ The management company shall furnish the commitment between itself and the unitholders with the following stipulations concerning the restriction on the right to receive dividend, the management of dividend and the exercise of voting rights by the unitholders:

(1) the restriction on the right to receive dividend of the unitholders who exceed the holding limit which shall be prescribed in accordance with the rules in Clause 26, Clause 27 and Clause 28. In this regard, the management company may prescribe an exemption of which for when the excessive holding was not due to an additional acquisition of the units;

(2) specify the steps to be taken with the dividend unable to pay the unitholder due to the restriction in (1) as follows:

(a) donating such dividend to the public revenue deeming that all unitholders have acknowledged and consent to such proceeding and;

(b) meanwhile the process in (a) has not been taken, the management company shall record and separate that dividend from other assets of the fund, and not including it in the calculation of the fund's asset value.

(3) restrict the voting right of the following unitholders:

(a) not counting the votes of the unitholders for the units held in excess of the holding limit which shall be prescribed in accordance with the rules in Clause 26, Clause 27 and Clause 28. If the units are classified and a proposal is made to a certain class of unitholders, the management company shall not count the votes of the unitholders for the unit held in excess of one third the total unit of that class save when the said unitholder is a person in (1)-(4) of Paragraph 2 in Clause 27;

(b) not counting the votes of the unitholders having a vested interest directly or indirectly in the proposal.

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

³ Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 4/2556 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 3)* dated 26 February 2013 (effective on 16 March 2013).

Clause 64 The management company shall arrange for the fund project to have the stipulations effecting that following an occurrence of an event as specified in the fund project and in the following cases, the management company shall dissolve the fund:

(1) the numbers of unitholders reduced to less than thirty five persons, unless exempted by the SEC Office;

(2) after a disposal of the infrastructure asset and a subsequent decrease in the fund's registered capital resulting the fund to have less than two billion baht of registered capital, calculated from the par of the units;

(3) after a disposal of the infrastructure asset and the management company is unable to maintain the collective investment in the infrastructure asset at least one thousand five hundred million baht and at least seventy five percent of the total asset value of the fund within one year from the date of the said disposal;

(4) when the SEC Office revokes the approval on the establishment of the fund.

Clause 65 The management company shall furnish the commitment between itself and the unitholders with a stipulation that when a unitholder request the management company to issue a unit certificate or a document of rights in the units, the management company shall issue the said certificate or document that is current and contains sufficient information for the unitholders to use as an evidence against the management company and other persons. In this regard, the restriction of rights of the unitholders (if any) shall be clearly indicated.

Part 3

Administration and Management of the Fund

Chapter 1

Management of the Infrastructure Asset

Clause 66 The management company shall establish at least one investment committee to advise or recommend the investment in infrastructure assets and the management of the infrastructure asset that the fund invests.

The investment committee under Paragraph 1 shall comprise of the following persons:

(1) the representatives from the management company in which at least one person shall be an infrastructure fund manager approved by the SEC Office;

(2) the specialists or persons with experience in the infrastructure business who possess the qualifications and do not have the prohibited characteristics as specified in the *Notification of the Securities and Exchange Commission concerning Determination of Untrustworthy Characteristics of Company Directors and Executives*.

Clause 67 In requesting for an advice or a recommendation from the investment committee, the management company shall proceed as follows:

(1) [request] the committee members to inform their interest in the subject matter;

(2) not allowing the interested members, whether directly or indirectly, in the subject matter to participate in the consideration of that matter.

Clause 68 The management company shall supervise the management of the fund so that the management complies with the fund project in material aspects.

Clause 68/1¹ The management company shall also comply with the following in managing the infrastructure asset that is the right receive future income or the right under the income sharing agreement:

(1) regularly track and verify the correctness and completeness of the share of income the fund receives;

(2) if an error that may affect the correctness or completeness of the share the fund receives is detected, the management company shall assign a specialist to direct the operator of the infrastructure business to correct such error.

Clause 69 For the management of the infrastructure asset in Clause 1(3) (a) to (d), the management company shall furnish relevant agreements with the requirements that cause the person who is the lessee, the contractor or the person authorized to operate the infrastructure assets to generate income to report facts and reasons to the management company without delay upon an occurrence of any circumstances or changes that may impact the value of the infrastructure asset.

Clause 70¹ If the fund invests in the infrastructure asset by holding the shares of a company that operates the infrastructure business, the management company shall arrange for a measure or a mechanism to allow itself to oversee and supervise that company's operation so that such operation complies with the fund project, this Notification and all other relevant notifications in the same manner as the fund's operation, *mutatis mutandis*. The said measure or mechanism shall include:

(1) assigning a personnel who is an infrastructure fund manager approved by the SEC Office to participate in the management of such company's business;

(2) carry out its duty to ensure that the executives and person with controlling power of the infrastructure business possess the qualifications and do not have the prohibited characteristics according to the *Notification of the Securities and Exchange Commission on the Determination of Untrustworthy Characteristics of Company Directors and Executives*;

(3)⁷ carry out its duty to ensure that any money borrowing and creation of encumbrances conducted by that company (if any) complies with the rules governing the fund, except that the rules related to the debt-to-equity ratio may apply specifically to the fund;

(4) arrange for the measure that allows the fund supervisor to verify whether the management company's operation is in compliance with the measure or mechanism laid

¹ Added by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 40/2555 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2)* dated 17 August 2012 (effective on 1 September 2012).

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 40/2555 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 2)* dated 17 August 2012 (effective on 1 September 2012).

⁷ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 36/2559 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 8)* dated 18 August 2016 (effective on 16 September 2016).

down under this Clause.

The arrangements in Paragraph 1 shall not include the compliance under Clause 43(1) for the said company may by itself operate the infrastructure business.

Chapter 2 Increase or Decrease of the Registered Capital of the Fund

Clause 71 The management company shall follow the following procedures to increase the fund's registered capital:

(1)⁵ the application for an approval on the increase of the fund's registered capital stating that the fund possess the features specified in Part 1 of this Notification, made in writing and submitted to the SEC Office with the following documents:

- (a) the details of the fund project where amended;
- (b) the draft prospectus to be used in the offering which may or may not contain the information on the offering information.
- (c) other evidentiary documentation as specified in the *Licensing Manual for the Public*.

⁹The SEC Office shall notify the result of the consideration of the application for the increase of the fund's registered capital within one hundred sixty days from the date on which the SEC Office has received the accurate and complete application and the evidentiary documentation according to the Licensing Manual for the Public. In this regard, the SEC Office has the power to issue an order under Clause 20, Clause 21 and Clause 35/1 in approving the increase of the fund's registered capital, *mutatis mutandis*.

(2)³ the public offering of the units to increase in the fund's registered capital shall be carried out in accordance with the rules in Clause 22/1, Clause 22/2, Clause 30 and Clause 31, *mutatis mutandis*;

(3) the application to amend of the fund's registered capital shall be submitted with the SEC Office within fifteen days from the closing date of the offering using the forms provided in the SEC Office's electronic system.

The approval to increase the fund's registered capital shall be terminated when:

(1) the management company did not commence the offering to increase the fund's registered capital within one year from the date the approval was granted;

(2) the value of the outstanding units including the loans (if any) is insufficient to acquire the infrastructure asset resolved by the unitholders. In this case, the management company shall proceed accordingly to Paragraph 2 of Clause 35, *mutatis mutandis*.

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 38/2558 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 6)* dated 10 July 2015 (effective on 20 July 2015).

⁹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 32/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 10)* dated 23 March 2018 (effective on 1 April 2018).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

Clause 72 The management company shall file an application to decrease the fund's registered capital to the SEC Office within five days from the date of refund to the unitholders using the forms provided in the SEC Office's electronic system.

The Management company shall provide the information related to every decrease of the fund's registered capital on its website and in the fund's annual report for the investor's examination. The said information shall contain at least the following details:

- (1) the reason for decreasing the fund's registered capital;
- (2) the amount of the fund's registered capital and the registered capital per unit to be decreased each time;
- (3) the book closing date and date of refund to the unitholders.

Chapter 3

Proposing for a Resolution of the Unitholders

Clause 73⁸ In making a proposal to the unitholders, the management company shall provide information to support the decision making of the unitholders in accordance with the following rules:

- (1) in case of calling for the unitholders' meeting, the management company shall comply with the rules specified under Clause 60/1(2);
- (2) in cases other than (1), the management company shall provide sufficient information to support the unitholders' decision making, which shall include the management company's and the fund supervisor's opinions on the proposed matters and the possible impacts on the unitholders if the resolution is given. In this regard, the management company shall present such information in the letter of proposal.

Chapter 4⁸

Disclosure of Information and Preparation of the Fund's Report

Clause 74 *Repealed.*

Clause 75 *Repealed.*

Clause 76 *Repealed.*

Clause 77 *Repealed.*

Clause 78 *Repealed.*

Clause 79 *Repealed.*

⁸ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 23/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 9)* dated 19 February 2018 (effective on 16 March 2018).

⁸ Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 23/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 9)* dated 19 February 2018 (effective on 16 March 2018).

Clause 80 *Repealed.*

Clause 81 *Repealed.*

Chapter 5

Operation and Delegation of the Management Company

Clause 82³ The management company shall employ persons with knowledge and capabilities and understanding of the investment management business and relevant rules who shall be approved by the SEC Office in accordance with the Notification of the Capital Market Supervisory Board concerning Rules on Personnel in Capital Market Business to carry out the following duties in compliance with relevant rules:

(1) infrastructure fund manager, to make investment decisions or to dispose infrastructure asset;

(2) fund manager, to make investment decisions on or to dispose of the assets other than the infrastructure asset;

The infrastructure fund manager in (1) and the fund manager in (2) of Paragraph 1 may be the same person.

Clause 82/1³ In appointing the infrastructure fund manager, the management company shall ensure that the appointed person has the following characteristics:

(1) not being a director, executive or employee of other companies that operates in similar manners or in competition with the management company, unless the management company can demonstrate that its management structure will not cause a conflict of interest or has efficient measures that can prevent conflicts of interest;

(2) in case of appointing an employee of the management company to be the infrastructure fund manager, such appointee shall hold a position with any of the following characteristics:

(a) not causing a conflict of interest to the investment management;

(b) being a position of director, the management company's manager or equivalent position called by other names who is the chief executive in the investment work unit.

Clause 83 The management company shall supervise and ensure that its personnel to act in accordance with the law on securities and exchange and the rules issued under the said law including the standard of practice prescribed by the association as approved by the SEC Office.

Clause 84 The management company may delegate the management of the fund concerning the investment and income generating activities including the supporting operations thereof, provided always that, the said investment and activities are irrelevant of

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 22/2557 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 4)* dated 17 June 2014 (effective on 1 July 2014).

the infrastructure asset.

The delegation shall be under the following rules:

(1) carefully select the appropriate personnel who will carry out the delegated tasks. If the delegation concerns the investment or income generating activities in the assets other than the infrastructure assets, the delegate shall be a person authorised to undertake the management of a private fund or to be a derivative fund manager, as the case may be. If the delegation concerns the investment management in a foreign country, the delegate shall be a person authorised to undertake the said business by a securities and exchange regulating agency that is a member of the International Organization of Securities Commission (IOSCO) and recognized by the SEC Office;

(2) sufficiently supervise and review the delegate's conduct so that such conduct complies with the law on securities and exchange and the relevant rules including the standard of practice prescribed by the SEC Office or by the association as approved by the SEC Office.

Clause 85 The management company shall facilitate the fund supervisor or its delegate so that such person may effectively carry out his duty related to the fund.

Chapter 6⁸

Disclosure of Information on Significant Incidents of the Fund

Clause 86 Upon an occurrence of any incident that causes or will cause an impact on the rights and benefits of the unitholders or the investment decision making or a change to the unit price, the management company shall report such incident together with the reasons thereof to the SEC Office in accordance with the rules, conditions and procedures specified in the Notification of the SEC Office.

Clause 87 Under the rules of Clause 86, if there is or may be a cause for the fund to be dissolved, the management company shall disclose information in accordance with the following rules:

(1) in case of dissolution of the fund due to maturity of the fund or any other predetermined causes, the management company shall:

(a) notify the fund supervisor and the Stock Exchange in writing at least five working days prior to the dissolution date;

(b) proceed as necessary to inform the investors of the said matter at least five working days prior to the dissolution date, such as advertising in the daily local newspaper.

(2) in any cases other than (1), the management company shall report the fund supervisor and the Stock Exchange without delay.

⁸ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Nor. 23/2561 Re: Rules, Conditions and Procedures for Establishment and Management of Infrastructure Funds (No. 9)* dated 19 February 2018 (effective on 16 March 2018).

Part 4
**The authority of the SEC Office relating to the Operation of
Management Company or the Fund**

Clause 88 The SEC Office may prescribe the types and particularities of the expenses that the management company may not pay from the money of the fund.

Clause 89 The SEC Office may exempt the following regulatory compliance of the management company if the management company can show that it is necessary and appropriate to grant such exemption:

- (1) the period to conclude an agreement to acquire the infrastructure asset;
- (2) the maintenance of the investment value in the infrastructure asset at the end of the accounting period;
- (3) the distribution of the units to the general investors and the listing of the units on the exchange, in case where the fund invests in a greenfield project which has later been developed to a brownfield project;
- (4) the dissolution of the fund for the fund having less than thirty five unitholders;

Part 5
The Enforcement date of the Notification

Clause 90 This Notification shall come into force from 16 January 2011.

Notified this 10st day of January 2011.

-signature-
(Mr. Thirachai Phuvanatanarubala)
Secretary-General
Office of Securities and Exchange Commission
Chairman
Capital Market Supervisory Board