

**UNOFFICIAL TRANSLATION**

Codified up to No. 12  
As of 14 February 2017

*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 Jor. 49/2555  
Re: Issuance and Offer for Sale regarding Units of  
Real Estate Investment Trust**

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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 35, Section 67 and Section 69 of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions relating to 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** This Notification shall come into force as from 1 January 2013.

**Clause 2** In this Notification:

“**REIT**” means a real estate investment trust;

“**unit**” means a trust certificate representing the rights of the holder as a beneficiary of a **REIT**;

<sup>1</sup>“**property fund**” means a property fund established according to the *Notification of the Office of the Securities and Exchange Commission concerning Rules, Conditions and Procedures for Establishment and Management of Property Funds*;

“**paid up capital**” means the total value of the **units** which are paid in full.

“**REIT manager**” means a person who performs the duty as **REIT manager** in accordance with the trust instrument;

“**registration statement**” means the registration statement of an offer for sale of securities in the category of **unit**;

“**financial advisor**” means a financial adviser whose name appears in the SEC’s approved list;

“**related person**” means a related person under the *Notification of the Capital Market Supervisory Board concerning the Rules on Related Party Transactions*;

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

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<sup>1</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 51/2556 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 2)* dated 16 December 2013 (effective on 16 December 2013).

<sup>2</sup>“**conversion**” means the conversion of *property fund* into **REIT**;

<sup>3</sup>“**Notification on Conversion**” means the *Notification of the Capital Market Supervisory Board concerning Conversion of Property Fund into Real Estate Investment Trust*;

<sup>4</sup>“**executive**” means an executive as specified in the *Notification of the Securities and Exchange Commission concerning Determination of Definitions in the Notifications on Issuance and Offer for Sale of Securities*;

<sup>5</sup>“**sale promotion**” means providing incentive gifts, rights or other benefits to an investor in order to stimulate the investor to invest in **units**;

“**underwriter**” means a securities company of which license is allowed to underwrite **units**;

“**associated person**” means any person having one of the following relationships with others:

- (1) spouse or child who has not yet become *sui juris*;
- (2) relationship between a juristic person and its shareholder or partner who holds shares or partnerships directly or indirectly more than fifty percent of issued shares or more than fifty percent of partnership interest in such juristic person;
- (3) private fund of any person in sub clause (1) or (2) above, but not including any provident fund.

**Clause 3** The issuance and offer for sale of **units** shall comply with the following rules:

- (1) an application for an approval, granting an approval for offer for sale of **units**, and the conditions to comply after obtaining an approval shall be in accordance with the rules under Part 1;
- (2) the submission of the **registration statement** shall be in accordance with the rules under Part 2;

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<sup>2</sup> Added by the Notification of the Capital Market Supervisory Board No. Tor Jor. 35/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 10) dated 11 August 2016 (effective on 1 September 2016).

<sup>3</sup> Added by the Notification of the Capital Market Supervisory Board No. Tor Jor. 35/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 10) dated 11 August 2016 (effective on 1 September 2016).

<sup>4</sup> Added by the Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 4) dated 27 April 2015 (effective 1 June 2015).

<sup>5</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3)* dated 20 August 2014 (effective on 1 September 2014).

<sup>6</sup>(3) the issuance and offer for sale of *units* for the conversion from *property fund* to *REIT* shall be in accordance with the rules under Part 3.

**Clause 4** Unless the provision indicates otherwise:

(1) the investment in, acquisition or disposal of, and taking advantage of a real estate by a *REIT* shall include such acts for the leasehold interest of the real estate;

<sup>7</sup>(2) [i] the lease shall include permission of utilising area with a compensation and providing services relating to such lease or utilising area, as the case may be, and [ii] the rental fee shall include a compensation from utilising area and from a charged fee providing services thereof.

## Part 1

### Application for an Approval and Criteria for Granting Approval regarding Offer for Sale of Units

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#### Chapter 1 Submitting of an application

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**Clause 5** Any person who wishes to submit an application for offer for sale of newly issued *units* shall be the one of the following person:

(1) in case such offer for sale for the purpose of establishing a *REIT*, the applicant shall be a person who will set up the *REIT* (settlor) and will become a *REIT manager*;

(2) in case of issuing additional new *units*, the applicant shall be the *REIT manager* to whom the trust instrument specifies power and duty to submit the application thereof.

The *REIT manager* under the first paragraph shall be a person permitted by the SEC Office to be the *REIT manager*, including any person in the process of submitting an application for such permission.

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<sup>6</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 51/2556 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 2)* dated 16 December 2013 (effective on 16 December 2013).

<sup>7</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3)* dated 20 August 2014 (effective on 1 September 2014).

**Clause 6** An application for an offer for sale of newly issued *units* shall be submitted to the SEC Office in accordance with the procedures as prescribed in the Notification of the SEC Office<sup>8</sup> together with at least the following evidentiary documentations:

(1) draft trust instrument in case of such offer for sale for the purpose of establishing a **REIT**, or an amended trust instrument in case of issuing additional new *units*;

(2) draft contract for appointment of a **REIT manager** in case of such offer for sale for the purpose of establishing the **REIT**, or an amended contract for appointment of the **REIT manager**, if any, in case of issuing additional new *units*;

(3) a **registration statement**, or documentation indicating the essences in line with [the form of] the **registration statement**;

(4) report on the appraised value of the real estate to be invested by the **REIT** which is prepared in accordance with the rules under this Notification;

(5) letter of certification from the trustee or a person becoming trustee of the **REIT** indicating the following essences:

(a) in case of the first establishment of the **REIT**, there shall be a statement indicating that such person [i] agrees to perform the duties as the trustee of the **REIT** after having studied the evidentiary documentation submitted to the SEC Office by the applicant, [ii] certifies that the draft trust instrument complied with this Notification and other Notifications issued by virtue of the *Trust for Transactions in the Capital Market Act B.E. 2550 (2007)*, and [iii] is ready to perform the duties as the trustee of the **REIT**;

(b) in case of issuing additional new *units*, there shall be a statement indicating that the trustee has studied the evidentiary documentation submitted by the applicant to the SEC Office and certifies that the procedure for increasing capital of the **REIT** being rightfully in accordance with the trust instrument and this Notification and other Notifications issued by virtue of the *Trust for Transactions in the Capital Market Act B.E. 2550 (2007)*;

(6) any other evidentiary documentation as stipulated by the Notification of the SEC Office.

<sup>9</sup>The application fee shall be paid at a rate as stipulated by the *Notification of the Securities and Exchange Commission concerning the Determination of Fees for Application regarding Offer for Sale of Newly Issued Securities and Application for Securitization Project* when the SEC Office has received the

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<sup>8</sup> The *Notification of the Office of the Securities and Exchange Commission No. Sor Jor. 41/2556 Re: Additional Provisions relating to Issuance and Offer for Sale of Units of Real Estate Investment Trusts*.

<sup>9</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 40/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 5)* dated 10 July 2015 (effective on 20 July 2015).

application together with the accurate and complete evidentiary documentation according to the Licensing Manual for the Public.

**Clause 7** In case of an application for an offer for sale of newly issued *units* with a guarantee of income, the applicant shall submit the evidentiary documentation as prescribed in Clause 6 together with the following documents:

- (1) summary of the essences of the draft agreement on income guarantee;
- (2) information relating to the income guarantor who is a juristic person and the latest credit rating of the guarantor which shall not be more than 1 year before the date of submitting the application and shall be conducted by a credit rating agency approved by the SEC Office;
- (3) document demonstrating the opinion of the applicant relating to the capability of the income guarantor under sub clause (2) to comply with the agreement thereof. In this regard, in case the income guarantor is a *related person* of the applicant, a document demonstrating the opinion of a *financial advisor* on such matter shall be also submitted as well;
- (4) audit report on the financial statement of the income guarantor under sub clause (2) for the past 3 fiscal years before submitting the application. In addition, the report on the latest financial year shall be audited by an auditor approved by the SEC Office.

The provision under sub clause (4) of the first paragraph shall not be applicable, in case the income guarantor has arranged either a letter of guarantee issued by a commercial bank or an equivalent collateral, which covers the same income amount within the period of time as guaranteed by the income guarantor.

**Clause 8<sup>10</sup>** Upon receipt of the application and the accurate and complete evidentiary documentation according to the Licensing Manual for the Public, the SEC Office shall review the facts in accordance with the procedures and methods specified in the Licensing Manual and notify the issues and observations derived from the review of the facts for the applicant to clarify within a period specified in the notifying letter. The proceeding shall be completed within one hundred and twenty days as from the date on which the SEC Office has received the accurate and complete evidentiary documentation according to the Licensing Manual for the Public.

<sup>11</sup>The SEC Office shall notify the result of the deliberation of the application within forty-five days as from the date of receiving the clarification of the issues and observation derived from the review of the facts.

In the case where the applicant wishes to request a waiver of the rules under this Notification, the applicant shall submit an application for the waiver together

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<sup>10</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 40/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 5)* dated 10 July 2015 (effective on 20 July 2015).

<sup>11</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 40/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 5)* dated 10 July 2015 (effective on 20 July 2015).

with evidentiary documentation in support of the waiver to the SEC Office before the SEC Office begins the deliberation process under the second paragraph in accordance with the procedures and methods specified in the Licensing Manual for the Public. In this regard, the SEC Office shall complete the deliberation of the application for the waiver within the same period of deliberating the application under the second paragraph.

**Clause 9**<sup>12</sup> An application for an offer for sale of newly issued *units* shall be jointly prepared and certified the accuracy and completeness of the information by a *financial advisor* unless the applicant qualifies all of the following conditions, such applicant may not appoint the *financial advisor* to jointly prepare the application:

- (1) having license to undertake securities business in the category of mutual fund management and having already started the business;
- (2) not being a person or having relationship or having interest with a person who will dispose of, transfer, lease or transfer right in real estate to a *REIT* in the way that may affect the applicant to lack independent performance of duties to [i] conduct a due diligence of a real estate in which the *REIT* would invest and [ii] disclose the information relating to the offer for sale of *units*.

The *financial advisor* who jointly prepared the application under the first paragraph shall not be a person or have relationship or interest with a person who will dispose of, transfer, lease or transfer right in real estate to the *REIT* in the way that may cause the *financial advisor* unable to perform its duties independently as stipulated by the *Notification of the Office of the Securities and Exchange Commission concerning Granting of Approval of Financial Advisors and Their Scope of Work*.

**Clause 9/1**<sup>13</sup> An application for an offer for sale of newly issued *units* as prescribed in Clause 9 and the evidentiary documentation submitted in support of the application shall be signed to certify the accuracy and completeness of the information by the following person:

- (1) any director who has the power to sign on behalf of the applicant;
- (2) any director who has the power to sign on behalf of a *financial advisor*, in case such application has to be jointly prepared by the *financial advisor*.

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<sup>12</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3)* dated 20 August 2014 (effective on 1 September 2014).

<sup>13</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3)* dated 20 August 2014 (effective on 1 September 2014).

## Chapter 2

### Criteria for granting an approval

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**Clause 10** An application for an offer for sale of *units* of a **REIT** shall be approved by the SEC Office upon compliance with the following rules:

(1) general characteristics of the **REIT**:

(a) the trust instrument or the draft trust instrument, as the case may be, shall be in accordance with [i] the *Trust for Transactions in the Capital Market Act B.E. 2550 (2007)*, the *Notification of the Office of the Securities and Exchange Commission concerning Provisions Relating to Particulars, Terms and Conditions in a Trust Instrument of Real Estate Investment Trust*, including Notifications, regulations and orders issued by virtue of such law, and [ii] the provisions as prescribed in this Notification;

(b) name or word indicating important characteristics of the **REIT** and not containing characteristics which may cause misunderstanding the investment policy of the **REIT**. Additionally, in case the investment policy involves investment in leasehold interest of real estate, it shall present characteristics of such investment as well;

<sup>14</sup>(c) demonstrating that the **REIT** has *paid up capital* not less than five hundred million baht after the offer for sale of *units* in order to support the investment in assets in accordance with Clause 12 or Clause 12/1;

(d) having the objective to register *units* as listed securities on the **Stock Exchange**;

(e) complying with the rules as prescribed in Clause 11 in case of classification of unit classes;

(f) having the determination of unit redemption only by cash or others equivalent to cash;

<sup>15</sup>(2) principal asset to be invested in:

(a) the principal asset to be invested in shall be real estate in accordance with the rules as prescribed in Clause 12, which may be direct investment, or indirect investment as prescribed in Clause 12/1;

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<sup>14</sup> Amended by the Notification of the Capital Market Supervisory Board No. Tor Jor. 6/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 9) dated 30 March 2016 (effective on 16 April 2016).

<sup>15</sup> Amended by the Notification of the Capital Market Supervisory Board No. Tor Jor. 6/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 9) dated 30 March 2016 (effective on 16 April 2016).

(b) an applicant shall be able to identify the principal asset to be invested definitely and shall demonstrate that it is ready to acquire such asset within sixty days as from the date when the establishment of the **REIT** is completed or as from the closing date of the offer for sale of additional new **units**, as the case may be;

(c) the principal asset shall not be a person having the characteristics under Clause 13/1 unless the applicant is able to demonstrate to the SEC Office that such person has made amendment to the cause, work system, management system and operating control which cause such person to have the characteristics under (1) and (2) of the first paragraph of Clause 13/1. In this regard, the provisions under (1) and (2) of the first paragraph of Clause 13/1, as the case may be, shall not apply to such person again.

(3) taking advantage of the principal asset:

(a) the **REIT's** revenue mainly comes from rental paid for the lease of its real estate. Besides, the **REIT** shall not enter into operating any business, for instance, hotel or hospital business;

(b) in case the **REIT** will let a business operator to lease its real estate which is business premises, for instance, hotel or hospital, there shall be an agreement stipulating the mainly exact amount of the rental fee. In case of having extra rental fee referred to the operating results of the lessee's business, the maximum of the extra rental fee thereof shall not exceed 50% of such exact rental fee;

(c) there shall be a provision [in trust instrument or the draft] prohibiting the lease of the **REIT's** real estate to any person who has the suspicious ground of using the real estate for immoral or illegal business. Accordingly, [the applicant shall demonstrate for ensuring that] the **REIT** would be entitled to terminate the lease agreement if it appears that the lessee uses its real estate for such business;

<sup>16</sup>(4) in case of borrowing money or making encumbrances, the **REIT** shall have the following characteristics:

(a) a clearly stating provision for allowing the **REIT** to borrow money or incur encumbrances. In this regard, the money borrowing of the **REIT**, either by debt issuance or entering into an agreement in the nature of money borrowing, shall not have the characteristics as specified under Clause 13/2;

(b) restriction of borrowing proportion, regardless of any means, not exceeding the rates as prescribed in Clause 14;

(c) restriction of incurring encumbrances only for the cases as prescribed in Clause 15.

The money borrowing of the **REIT** under the first paragraph shall also mean the money borrowing by a company of which the **REIT** is a shareholder under the first paragraph of Clause 12/1.

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<sup>16</sup> Amended by the Notification of the Capital Market Supervisory Board No. Tor Jor. 6/2559  
Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 9) dated 30 March 2016 (effective on 16 April 2016).



<sup>17</sup>(5) for the management of the **REIT**:

(a) there shall be no reasonable suspicion that the mechanism for managing the **REIT** is unable to protect the rights of the unitholders or treat the unitholders fairly;

(b) there shall be no reasonable suspicion that the applicant lacks a sufficient system to manage the **REIT** reliably in accordance with the trust instrument;

(c) it shall be demonstrated that the applicant has conducted a due diligence on the real estate to be invested in accordance with the rules as prescribed in Clause 16, and has disclosed information and risks in the **registration statement** completely and sufficiently;

(d) it shall be demonstrated that there is a management of conflicts of interest which may occur from management of the **REIT** in compliance with the rules under Clause 17;

(e) it shall be demonstrated that the trustee has the availability to perform duties and not lack of independence as prescribed in the *Notification of the Securities and Exchange Commission concerning Rules for Being Settlor and Trustee of Real Estate Investment Trust*;

(6) disclosure of information:

(a) there shall be no reasonable suspicion that the information disclosed to investors is incomplete or insufficient for making a decision to invest or contains any statement that may mislead investors;

(b) there shall be no reasonable suspicion that a **REIT manager** and the trustee lack a sufficient system to prepare and disclose information continuously and reliably in accordance with the trust instrument and the Notification relevant to disclosure of information of **REIT**;

(7) other provisions:

(a) in case the applicant is in the process of applying for an approval to become the **REIT manager**, such person will be authorized to offer for sale of **units** on condition that the applicant has obtained an approval to be the **REIT manager**;

(b) in case of the application for an offer for sale of additional new **units**, the applicant shall have undergone the procedure for issuing such **units** rightfully, for instance, obtaining the resolution of the unitholders as specified in the trust instrument;

(c) in case the **REIT** has guaranteed income, such guarantee shall be complied with the rules as prescribed in Clause 18;

<sup>18</sup>(d) in case the applicant wishes to raise fund for the first time from an offer for sale of **REIT** units and from a loan by way of an offer for sale of newly

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<sup>17</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3)* dated 20 August 2014 (effective on 1 September 2014).

<sup>18</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 85/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 7)* dated 2 December 2015 (effective on 1 January 2016).

issued debentures concurrently, it shall be demonstrated that the person who will sell, dispose of, transfer, lease or grant the rights to real estate to the **REIT** agrees to be bound to the commitment to buy **REIT** units at an amount not less than specified under Clause 24/1(2).

**Clause 11** In case the **units** are categorized into classes, the following rules shall apply:

- (1) **units** in the same class shall have equal rights and benefits;
- (2) **units** in each class may have different rights and benefits only in the following matters:
  - (a) determination of benefits or return of investment to the unitholders;
  - (b) fees or expenses collected from the unitholders;
  - (c) any other possibly different rights or benefits which the applicant has taken into account benefits of the unitholders as a whole and impacts on the unitholders of each class.

**Clause 12** The investment of a **REIT** in real estate shall be in accordance with the following rules:

- (1) being an investment to obtain ownership or possession of such real estate. In this regard, obtaining possession of real estate shall be any of the following cases:
  - (a) acquisition of a real estate for which Nor.Sor. 3 Kor. [which is the certificate of utilization] has been issued;
  - (b) acquisition of the leasehold interest of a real estate for which an title deed or possession right in the category of Nor.Sor. 3 Kor. [which is the certification of utilization] has been issued;
- (2) the acquired real estate shall not be under enforcement of real right or any dispute unless a **REIT manager** and the trustee have considered and expressed their opinion in writing that such enforcement or dispute does not affect the taking advantage of such real estate materially, and the conditions for acquiring such real estate are beneficial to the unitholders as a whole;
- (3) the contract for the acquisition of the real estate shall not contain any agreement or commitment which may cause [i] the **REIT** being unable to dispose of the real estate at a fair value (at the time of disposal), for instance, the agreement relating to right of first refusal with a price specified in advance, or [ii] the **REIT** having more than normal duties which a lessee should have at the end of the lease;
- (4) the acquired real estate shall be ready to be used for taking advantage and the real estate shall have an aggregate value of not less than 75% of the total value of the **units** offered for sale including the amount of loan (if any). In this regard, the **REIT** may invest in a project under construction provided that [i] the value of the investment for the acquisition and completion of the development project of the real estate shall not [totally] exceed 10% of the total asset value of the **REIT** (after the offer for sale of **units**), and [ii] sufficient working capital could be afforded for the rest of development without affecting the going concern issue of the **REIT**;

<sup>19</sup>(5) being a full appraisal with the verification of entitled rights evidence, for the purpose of public use for disclosure to investors. Such appraisal shall perform by at least two appraisers and their valuation reports having been made not more than six months before the date of submitting the application, and the applicant and the *financial advisor* who jointly prepares the application (if any) consider such appraisers to be appropriate and reliably and sufficiently reflect the true value and have the following characteristics;

(a) being an appraiser approved by the SEC Office;

(b) in case of investment in a foreign real estate, being a person on the list of persons eligible to appraise the real estate as provided by an authority or the regulator of the country where the real estate to be invested is located. If such list of persons is unavailable, the person responsible for the appraisal of the real estate shall have any of the following characteristics:

1. being a provider of asset appraisal services with widely recognized work performance in the country where such real estate is located;

2. being a person with an international operating standard work system;

3. being an asset appraisal with a widely international network (international firm).

(6) the acquired real estates shall have an aggregate value of not less than 500 million baht, and in case the amount of fund raised from the offer for sale of *units* is less than the value of the real estates, the applicant shall demonstrate that there are other sufficient sources of fund for supporting the acquisition of such real estates.

**Clause 12/1**<sup>20</sup> The direct investment in the principal asset of the *REIT* under Clause 10(2)(a) shall be an investment through holding of shares issued by a company established with the objective to operate in the same manner of the *REIT* under this Notification at a rate of no less than ninety-nine percent of the outstanding shares and of the total voting shares of such company. The *REIT* may offer a loan to the company under the first paragraph through the holding of debt instruments or entering into an agreement in the nature of money borrowing, in which case such loan shall be deemed an indirect investment in the principal asset under Clause 10(2)(a) as well.

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<sup>19</sup> Amended by the Notification of the Capital Market Supervisory Board No. Tor Jor. 35/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 10) dated 11 August 2016 (effective on 1 September 2016).

<sup>20</sup> Added by the Notification of the Capital Market Supervisory Board No. Tor Jor. 6/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 9) dated 30 March 2016 (effective on 16 April 2016).

**Clause 13<sup>21</sup>** The indirect investment in the principal asset of a **REIT** under Clause 12/1 shall be in accordance with the following rules:

(1) there shall be an appraisal of the value of the real estate in which the **REIT** invests indirectly, both in the part of the **REIT** and the company whose shares are held by the **REIT**, as follows:

(a) the value appraisal in the part of the **REIT** shall be in accordance with the rules under Clause 12(5) by considering tax burdens of the company whose shares are held by the **REIT** and other factors that may affect the price of the real estate indirectly invested by the **REIT**;

(b) the value appraisal in the part of the company whose shares are held by the **REIT** under the first paragraph of Clause 12/1 shall be in accordance with the rules under Clause 12(5).

(2) there shall be an appraisal of other assets invested by the company whose shares are held by the **REIT** in accordance with the following rules:

(a) the fair value specified according to the rule for determining a fair value of investment money as issued by the association of investment management companies shall apply, *mutatis mutandis*;

(b) in the case where the rule under (a) does not support the determination of the fair value of any asset, the value according to a recognized guidance or international standard shall apply.

The association of investment management companies in the first paragraph means an association related to securities business licensed to be established and registered with the SEC Office to promote and develop securities business in the category of investment management.

(3) in the case where the **REIT** invests in debt instrument or an agreement deemed to be an indirect investment under Clause 12/1, there shall be an appraisal of the instrument or the agreement in accordance with the rules in (2);

(4) it shall be demonstrated that there is a measure or mechanism which allows the trustee and a **REIT manager** to supervise and control such company to operate business in accordance with the rules specified for the **REIT** which invests in the principal asset directly, except that the rules related to the proportion of money borrowing under Clause 14 may apply to the part of the **REIT** exclusively.

For the interest of compliance with (4) of the first paragraph, the SEC Office has the power to issue a measure or mechanism which the applicant is required to have.

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<sup>21</sup> Amended by the Notification of the Capital Market Supervisory Board No. Tor Jor. 35/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 10) dated 11 August 2016 (effective on 1 September 2016).

<sup>22</sup>**Clause 13/1** The **REIT** shall not enter into an agreement for investment in the principal asset with any person with the following characteristics if such person or other persons whom such person can control will be involved in the **REIT** management except where such person is a company whose shares are listed on the stock exchange, in which case only the characteristics under (1)(a) shall be considered:

(1) not possessing the following characteristics within a period of five years prior to the date of submitting the application for offer for sale of **REIT** units:

(a) having a record of contravening rules or conditions related to securities offering in a material matter;

(b) having been rejected by the SEC Office regarding an application for offer for sale of newly issued shares on a material ground of suspicion concerning management mechanism in the following manners:

1. there is a possibility of failure to treat shareholders fairly by giving unfair advantage to any group of shareholders over other shareholders, or giving more benefits than other shareholders improperly;

2. there is a possibility of failure to protect shareholders' rights by allowing any person to receive financial benefits other than what should be earned normally or by causing the company to lose benefits that should have been received.

(c) having been rejected by the SEC Office regarding an application for an offer for sale of newly issued securities on a suspicious ground concerning public disclosure of information that is insufficient and incomplete for investment decision making, or misleading to investors in a manner of concealing, disguising or fabricating information in the particulars, or taking material action;

(d) having withdrawn an application for offering for sale of newly issued securities without clarification of the suspicious grounds under (b) or (c) to the SEC Office, or with clarification but no demonstration of facts or reasons to appropriately remove such suspicious grounds under (b) or (c).

(2) having been judged by the final court for an offense related to property on the ground of acting deceitfully, fraudulently or dishonestly, which caused widespread damage, regardless of whether under Thai or foreign laws, within a period of ten years prior to the date of submitting an application for offer for sale of **REIT** units;

(3) being under a criminal complaint or legal proceedings for an offense related to property by a relevant authority on the ground of acting deceitfully, fraudulently or dishonestly, which caused widespread damage, regardless of whether under Thai or foreign laws;

(4) being a person under a reasonable ground of suspicion that there is an arrangement of form for the persons with the characteristics under (1) (2) or (3) to avoid being subject to the SEC Office's consideration in accordance with the rules under (1) (2) or (3).

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<sup>22</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 53/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 6)* dated 13 July 2015 (effective on 16 August 2015).

**Clause 13/2<sup>23</sup>** The money borrowing of the **REIT** by any means shall not have the following characteristics:

- (1) having an agreement and conditions in the same manner as the requirements of a perpetual bond;
- (3) having the feature of structured note, except when having all of the following characteristics:
  - (a) granting the callable right to debtor or the puttable right to the **REIT**;
  - (b) specifying fixed interest or return or variable according to the interest rate of a financial institution or other interest;
  - (c) not specifying any other conditions for payment of interest or returns with additional underlying factors.
- (3) having the characteristics of securitization.

**Clause 14** A **REIT** may procure a loan at an amount not exceeding any of the following proportions unless such exceeding proportions do not occur from additional loans:

- (1) thirty-five percent of the total asset value of the **REIT**;
- (2) sixty percent of the total asset value of the **REIT** in case the **REIT** has the latest rating level in the investment grade, determined not more than 1 year before the date of applying for the loan by a credit rating agency approved by the SEC Office.

The procuring of loan under the first paragraph shall include the issuance of instruments or entering into contracts, in whatever form, whose real objective or substance has the characteristics of a loan.

**Clause 15** Encumbrances incurred by a **REIT** shall be limited only to necessary cases and shall relate to the management of the assets of the **REIT** as follows:

- (1) the incurring of encumbrances relating to the main agreement, in which the **REIT** may enter, in accordance with the provisions under this Notification, for instance, using the assets of the **REIT** as collateral of loan as prescribed in Clause 10(4);
- (2) the incurring of encumbrances which are normal commercial practice or normal practice for such type of transaction.

**Clause 16** In conducting a due diligence of the real estate before investment, the applicant shall perform professionally by at least examining and reviewing the following matters:

- (1) characteristics of the real estate, for instance, location, entrance and exit, opportunities for generating income and various encumbrances of such real estate;
- (2) the ability of the counterparty to perform a juristic act along with the completeness, accuracy and enforceability of the documents of entitled right or relevant contracts;

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<sup>23</sup> Amended by the Notification of the Capital Market Supervisory Board No. Tor Jor. 63/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 11) dated 20 December 2016 (effective on 1 February 2017).

- (3) other appropriate reasons for investing in such real estate;
- (4) in case the real estate to be invested by the **REIT** is in a foreign jurisdiction, a due diligence shall be conducted on the ability of the **REIT** to acquire and hold the real estate in compliance with the law of such foreign jurisdiction, and the opinion of a legal advisor who is an expert in the law of such foreign jurisdiction shall accompany the due diligence.

**Clause 17**<sup>24</sup> The management of conflicts of interest which may occur from management of a **REIT** shall be at least conformed to the following rules:

(1) the applicant shall demonstrate that there is a measure or mechanism which may support the management of the **REIT** with fairness to and no exploitation of the **REIT** and such management is in accordance with the rules as specified in the *Notification of the Office of the Securities and Exchange Commission concerning Rules, Conditions and Procedures for the Approval of REIT manager and Standard Conduct* and the *Notification of the Securities and Exchange Commission concerning the Rules for Being Settlor and Trustee of Real Estate Investment Trust*;

<sup>25</sup>(2) in case a **REIT manager** also manages the other **REIT**, the principal asset of the **REIT** stated in the application for an offer for sale of **units** shall not be in the same category as the principal asset of the other **REIT** unless in accordance with all of the rules as follows:

(a) the **REIT** stated in the application is a **REIT** converted from a **property fund** under the Notification on Conversion;

(b) the **REIT manager** of the **REIT** stated in the application is licensed to undertake securities business in the category of mutual fund management who manages the **property fund** under (a).

**Clause 18** In case of having guarantee of income, such guarantee shall be in compliance with the following rules:

(1) a **REIT** would receive a guarantee of income from any lessee of real estate at the amount specified in the contract of income guarantee;

(2) at least 1 guarantor of income shall be a juristic person;

(3) there shall be a provision specifying that the guarantor of income agrees to bind as the guarantor of income and as a joint debtor with the lessee;

(4) there shall be a tripartite agreement among the guarantor of income, the lessee and the **REIT** that in case the guarantor of income fails to comply with the contract of income guarantee, it shall be deemed that the lessee has breached

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<sup>24</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3)* dated 20 August 2014 (effective on 1 September 2014).

<sup>25</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 35/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 10)* dated 11 August 2016 (effective on 1 September 2016).

the lease contract. In this regard, such agreement shall not have terms or conditions in the following manners:

- (a) terms which exempt liability of the guarantor of income except in case of force majeure or it is not a fault of the guarantor of income;
- (b) conditions beyond necessity with characteristics which would cause the **REIT** make a claim with difficulty or excessive burden.

### Chapter 3 Powers of the SEC Office

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**Clause 19**<sup>26</sup> Repealed.

**Clause 20** In case there is a certain fact appeared to the SEC Office leading to any of the following reasonable suspicions, the SEC Office may reject an application:

- (1) an applicant or the offer for sale of **units** has the characteristic or meets the rules and conditions to obtain an approval according to this Notification, but there is a certain fact indicating that the purpose or the substance of such offering is to avoid any provisions of the *Securities and Exchange Act B.E. 2535 (1992)* or the *Trust for Transactions in the Capital Market Act B.E. 2550 (2007)* or the rules issued by virtue of such Acts or this Notification;
- (2) the offer for sale of **units** may be in contrast with the public interest or national policies;
- (3) the offer for sale of **units** may cause an adverse effect to the credibility of the Thai capital market as a whole, or;
- (4) the offer for sale of **units** may cause [i] any damages or an unfair treatment to the investors as a whole or [ii] the investors not obtain correct and sufficient information for supporting the decision to invest.

**Clause 21** In case of any of the following circumstances, the SEC Office would render a waiver on certain rules under this Notification in deliberating an application or may not apply certain conditions under this Notification with an offer for sale of **units** of the approved **REIT**:

- (1) there is clearly a ground to consider that such rules or conditions to be waived are immaterial to the consideration of such approval, and costs outweigh benefits derived from compliance with the rules or conditions;
- (2) an applicant is subject to restrictions under other laws which constrain it from compliance with the rules or conditions to be waived;
- (3) the applicant has provided other sufficient measures in lieu of its compliance with the rules or conditions to be exempted.

For rendering a waiver under the first paragraph, the SEC Office shall

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<sup>26</sup> Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 40/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 5)* dated 10 July 2015 (effective on 20 July 2015).



mainly consider the appropriateness and the sufficiency of the information for supporting the investors to make decision for investing, and measures for protecting the investors. In this regard, the SEC Office may determine an additional requirement for compliance by the applicant.

## Chapter 4

### Conditions for approval

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#### Division 1

#### General provisions

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**Clause 22** An approved person under Chapter 2 of this Part shall comply with the conditions in this Chapter.

**Clause 23** In case there is certain fact or demeanor appeared to the SEC Office after an applicant has obtained an approval to offer for sale of *units* that the deliberation of the SEC Office would be changed, if such fact or demeanor has arisen prior to the approval, the SEC Office is empowered to:

(1) order the approved person, [or] director or *executive* [of the approved person] to elucidate or disclose additional information within a specified period and suspend the approval of the offer for sale of *units* until clarification or correction has been made within the specified period;

(2) order the approved person to suspend the offer for sale of the newly issued *units* in the portion which has not been offered or subscribed yet and order to discharge the approval in such portion.

In issuing the orders under the first paragraph, the SEC Office shall take into account the following factors:

- (1) the severity of the facts or demeanors which have changed;
- (2) the impact on the investors who have subscribed such *units*.

**Clause 23/1**<sup>27</sup> In this Division:

The terms, “*major shareholder*,” “*controlling person*,” “*major company*,” “*subsidiary company*,” “*associated person*” shall have the same meanings as defined in the Notification of the Securities and Exchange Commission concerning Determination of Definitions in the Notifications on Issuance and Offer for Sale of Securities. In this regard, the consideration shall mainly involve *REIT manager*.

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<sup>27</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 4)* dated 27 April 2015 (effective 1 June 2015).

## Division 2

### Offer for sale and allocation of units

**Clause 24** An approved person shall complete the offer for sale of the *units* within 6 months as from the date on which the SEC Office notifies the approval. In case the approved person is unable to complete the offer within such period, the approval shall be deemed terminated.

**Clause 24/1**<sup>28</sup> For the initial offering of *REIT* units, if the approved person offers for sale of *REIT* units and seeks a loan through an offer for sale of newly issued debentures concurrently, the following rules shall apply:

(1) the approved person shall offer the *REIT units* to the persons who will sell, dispose of, transfer, lease or grant the rights in real estate to *REIT* before offering the *REIT units* to other investors;

(2) the total value of the *REIT units* to be offered to the persons under (1) shall not be less than one hundred million baht or not less than ten percent of the total units which such persons wish to sell, whichever value is the lower;

(3) the approved person shall establish a *REIT* by transferring the total amount of money received from the offer of the *REIT units* under (2) to the trustee for the purpose of establishing a *REIT* under the rules specified in Clause 35 prior to offering the rest of the *REIT units* and the debentures to investors.

**Clause 25**<sup>29</sup> In offering for sale of the *units*, an approved person shall:

(1) comply with the rules specified for offer for sale of shares under the *Notification of the Capital Market Supervisory Board concerning Underwriting of Newly Issued Securities in the Category of Shares and Share Warrant, mutatis mutandis*, unless the provisions of this Division specify otherwise.

For the interest of complying with the rules specified under the first paragraph, the SEC Office may announce a detailed guideline appropriate for *REIT*.

(2) appoint an *underwriter* for making underwriting process unless the approved person is the *underwriter*, in which case the approved person may perform such underwriting in accordance with the *Notification of the Capital Market Supervisory Board concerning the Rules, Conditions, and Procedures for Securities Underwriting, mutatis mutandis*;

(3) in case of assigning another person to be the *underwriter*, the approved person shall:

<sup>28</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 85/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 7)* dated 2 December 2015 (effective on 1 January 2016).

<sup>29</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 4)* dated 27 April 2015 (effective 1 June 2015).

- (a) supervise the *underwriter* to allocate *units* in accordance with the rules in this Notification and the *Notification of the Capital Market Supervisory Board concerning the Rules, Conditions and Procedures for Securities Underwriting*;
- (b) have an agreement with the *underwriter* regarding refund of *units* subscription;

(4) provide a statement in the subscription form indicating that the subscription, cancellation and allocation of *units* are as disclosed in the *registration statement* and the prospectus;

<sup>30</sup>(4/1) comply with the rules as specified under Clause 25/1, Clause 25/2 and Clause 25/3 in case of [i] an *advertisement* for offer or being going to offer for sale of *units* by a method apart from a delivery or distribution of the prospectus and [ii] *sale promotion*. In this regard, for the purpose of complying with such rules, the SEC Office is empowered as follows:

- (a) to issue detailed rules for the purpose of sufficient clearness in order that any approved person would be able to comply with those rules relating to the *advertisement* and *sale promotion*;

- (b) to announce a detailed guideline for the benefit of compliance with the rules relating to the *advertisement* and *sale promotion* in order to instruct appropriate and corresponding practicality. In case of having complied with such guideline, it shall be deemed that the approved person has already complied with the rules under this Notification;

- (c) to specify some cases of the *advertisement* or *sale promotion* which shall be approved by the SEC Office before making the *advertisement* and *sale promotion* in order to inspect the conformity of such *advertisement* and *sale promotion* with the rules as specified in this Notification;

<sup>31</sup>(4/2) comply with one or more of the following SEC Office's order in case the approved person has not complied with the rules under sub clause (4/1):

- (a) wholly or partly cease the *advertisement* or *sale promotion*;
- (b) amend the information or the statement in the *advertisement* or *sale promotion*;

- (c) elucidate complete, accurate or not misleading information to investors;

- (d) act or refrain from acting within the specified period in order

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<sup>30</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3)* dated 20 August 2014 (effective on 1 September 2014).

<sup>31</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3)* dated 20 August 2014 (effective on 1 September 2014).

to provide period for investors to make decision on the complete, accurate, or not misleading information;

(5) entirely cancel the offer for sale of **units** and refund the money to the subscribers at the end of the initial offer for sale of **units**, if there appears any of the following cases:

(a) there are less than 250 subscribers or the distribution of **units** does not comply with the *Regulation of the Stock Exchange of Thailand concerning Listing of Units as Listed Securities*;

(b) the value of the subscribed **units** combined with the value of the loan from other persons (if any) are insufficient to invest in the real estate or less than the amount specified in the **registration statement** and the prospectus;

<sup>32</sup>(c) the allocation of **units** to any person, **associated persons**, settlor, trustee, a **REIT manager** or foreign investors does not conform to the rates or rules as specified in this Division and the rectification has failed;

(d) the transfer of the money received from the sale of **units** to the trustee for the establishment of a **REIT** fails to be completed within 15 business days as from the closing date of the offer for sale of **units**;

(6) cancel the offer for sale of additional new **units** of an already established **REIT** and refund the money to the subscribers, if there appears any of the following cases:

(a) the value of the subscribed **units** combined with the money reserved by the **REIT** for investing in real estate and the money borrowed from other persons (if any) are insufficient to invest in the real estate as specified in the **registration statement** and the prospectus. In this regard, the offer for sale of all **units** shall be cancelled;

<sup>33</sup>(b) the allocation of **units** to any person, **associated persons**, settlor, trustee, the **REIT manager** or foreign investors which causes the unitholding of such person or such group of persons when combined with **units** already held (if any), does not conform to the rates or rules as specified in this Division. In this regard, the offer for sale shall be cancelled only for the part in excess of the specified rates or rules;

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<sup>32</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 4)* dated 27 April 2015 (effective 1 June 2015).

<sup>33</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 4)* dated 27 April 2015 (effective 1 June 2015).

<sup>34</sup>(7) proceed or assign the **underwriter** to proceed as follows, in case of the cancellation of the offer for sale for whatever reason:

(a) return money paid for subscription of **units** to the subscribers within the same period as the standard work period of securities company in such case as specified by the association of Thai securities companies. In case of failure to return the money within such period, an interest at the rate no less than 7.5 percent per annum shall be paid;

(b) shall not use the money paid for subscription of **units** as prescribed in sub clause (a) for any purpose of the approved person except for return to the subscribers;

<sup>35</sup>(8) notify the SEC Office within 15 days as from the date of cancellation of the offer for sale of the **units**. In this regard, in case of the cancellation of the offer for sale under sub clause (5) or (6)(a), it shall be deemed that the approval of such offer for sale is ceased.

The approved person shall also declare the conditions for cancellation of the offer for sale under sub clauses (5) and (6) of the first paragraph in the **registration statement** and the prospectus.

**Clause 25/1**<sup>36</sup> An approved person who wishes to arrange for an **advertisement** shall manage the **advertisement** in the appropriate manner of content, proportion of content and form of presentation, in order that an investor would be able to receive necessary and useful information for making a decision of investment in **units**. Additionally, the approved person shall arrange the **advertisement** in accordance with the following criteria:

- (1) the **advertisement** shall not contain false, overstated, distorted, concealed or misleading information;
- (2) the **advertisement** shall contain material information not different from information presented in the **registration statement** and draft prospectus submitted to the SEC Office under Part 2 and 3 of this Notification;
- (3) the **advertisement** shall not urge the investor to invest in **units**;

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<sup>34</sup> Amended by the Notification of the Capital Market Supervisory Board No. Tor Jor. 13/2560 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 12) dated 14 February 2017 (effective on 1 March 2017).

<sup>35</sup> Amended by the Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3) dated 20 August 2014 (effective on 1 September 2014).

<sup>36</sup> Added by the Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3) dated 20 August 2014 (effective on 1 September 2014).

(4) the **advertisement** shall not imply or guarantee returns earned from investment in **units**, unless [i] the SEC Office has rendered a waiver or [ii] the estimated future returns has referred with all of the following information:

(a) reasonable information used for a factor of estimation;  
 (b) risk factors which may arise from each condition of estimation;  
 (c) information under sub clause (a) and (b) arranged in form which the investors would be able to understand correctly and not misleading;

(5) the **advertisement** shall have appropriate caution regarding risks of investment in **units** and shall notify a place for enquiring additional information about investment in **units**;

(6) in case of using or referring other information provided by other persons, such information shall be credible sources and current, and shall identify such sources obviously;

(7) in case it is the **advertisement** for a **sale promotion**, the main information in the **advertisement** shall be the information relating to **units** whilst the information relating to **sale promotion** is minor substance;

(8) the advertising expenses could be charged from a **REIT** only when the **advertisement** has been acted on behalf of or is useful for the **REIT**;

(9) the approved person shall supervise the advertiser, who jointly arranged for the advertisement together with the approved person or representative of the approved person, to comply with the rules as specified in sub clause (1) to (8).

In case the **advertisement** under the first paragraph has proceeded prior to the effective date of the **registration statement** and draft prospectus, the approved person shall comply with the rules under the *Notification of the Office of the Securities and Exchange Commission concerning Dissemination of Information relating to Offer for Sale regarding Units of a Real Estate Investment Trust prior to the Effective Date of the Registration Statement and Draft Prospectus* aside from the rules under the first paragraph.

**Clause 25/2**<sup>37</sup> An approved person shall arrange any statement, caution or information for an **advertisement** clearly heard or obviously seen, and suitable for presented form. In addition, the approved person shall attend the importance of expressing any caution in the same manner of mostly other statements or information in the **advertisement**.

**Clause 25/3**<sup>38</sup> An approved person may arrange **sale promotion** by complying with the following rules:

(1) shall not entice or urge an investor by using **sale promotion** in order that the investor will decide to invest in **units** without awareness of necessarily fundamental information for investment;

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<sup>37</sup> Added by the Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3) dated 20 August 2014 (effective on 1 September 2014).

<sup>38</sup> Added by the Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3) dated 20 August 2014 (effective on 1 September 2014).

- (2) shall not make such promotion to be a lucky draw or a manner of drawing lots for finding the investors who gets a gift, a right or any benefit;
- (3) shall have explicit rules and conditions for allowing a gift, a right or any benefit which is easy to understand, not misleading, proper and fair;
- (4) shall notify publicly about *sale promotion* in advance within appropriate period;
- (5) shall not charge expenses of the *sale promotion* from a *REIT*.

**Clause 26** In allocating the *units* of a *REIT*, an approved person shall perform in accordance with the *registration statement* and the prospectus including the rules as prescribed in Clause 27 to Clause 30.

**Clause 27** An approved person shall allocate the *units* of the *REIT* to any person or *associated persons* at an amount not more than the following rates:

- (1) fifty percent of the total number of sold *units* of the *REIT*;
- (2) fifty percent of the total number of sold *units* of each tranche in case the *units* are classified into classes.

**Clause 28**<sup>39</sup> Under Clause 27 and Clause 29, in case the approved person wishes to allocate units to the *REIT manager*, director, *executive*, *major shareholder*, *controlling person*, *major company* or *subsidiary company* of the *REIT manager* or *related persons* of the aforesaid persons, the approved persons shall segregate the units to be allocated to the aforesaid persons from the units to be allocated to the public clearly, and disclose the types of the said persons and the amounts to be allocated in the registration statement and the prospectus.

**Clause 29** In case the person to whom the *units* are allocated is the settlor, the trustee or a *REIT manager*, the allocation of the *units* to such person shall be in accordance with the rates and rules as specified in the *Notification of the Securities and Exchange Commission concerning Rules for Being Settlor and Trustee of Real Estate Investment Trust* and the *Notification of the Office of the Securities and Exchange Commission concerning Rules, Conditions and Procedures for the Approval of REIT manager and Standard of Conduct*, as the case may be.

**Clause 30** In case a *REIT* has invested in real estate in the Kingdom of Thailand, and the laws, rules or regulations relating to such real estate has specified the proportion of investment by foreign investors, the approved person shall also allocate the *units* to the foreign investors in accordance with such laws, rules or

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<sup>39</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 4)* dated 27 April 2015 (effective 1 June 2015).

regulations.

In case the **REIT** has invested in the real estate under the first paragraph through many projects and according to many laws, rules or regulations specifying different proportions of investment by foreign investors, the approved person shall allocate the **units** according to the minimum proportion as stipulated by such laws, rules or regulations.

**Clause 31**<sup>40</sup> In the case where a certain fact appears to the approved person that the unitholding of any person, **associated persons**, settlor, trustee, a **REIT manager** or foreign investors does not conform to the rates or rules as specified in this Notification, the approved person shall:

(1) notify such person immediately about the limitation of the voting right and dividend payment as prescribed in the trust instrument which has been prepared in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Provisions relating to Particulars and Statements in the Trust Instrument of a Real Estate Investment Trust*;

(2) report to the SEC Office within five business days as from the date when the approved person becomes aware or should be aware of the incident.

**Clause 32** An approved person shall perform as necessary to ensure that the unitholding of any person, **associated persons**, settlor, trustee, a **REIT manager** or foreign investors complies with the rates or rules as specified in this Notification. In this regard, the performing thereof shall include [i] the arrangement of an operating system which is able to detect the excessive unitholding or [ii] the appointment of a registrar who has such system.

### **Division 3** **Conditions after offer for sale**

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**Clause 33** An approved person shall act in accordance with the obligations given in an application, the **registration statement** and the prospectus as well as the provisions in the trust instrument.

**Clause 34** An approved person shall prepare a trust instrument, which contains substances not different from the draft one having passed the deliberation of the SEC Office, before or on the date of vesting the property in the trustee for establishment of a **REIT** as prescribed in Clause 35, and shall submit a copy of the signed trust instrument to the SEC Office within 15 days as from the execution of the trust instrument.

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<sup>40</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 18/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 4)* dated 27 April 2015 (effective 1 June 2015).



**Clause 35**<sup>41</sup> An approved person shall arrange for the *underwriter* to transfer the money received from the sale of the *units* to the trustee in accordance with the following rules:

(1) In case of initial capital raising through a unit offering other than the case under (2), the transfer of money to the trustee for *REIT* establishment shall be completed within fifteen business days as from the closing date of the offer for sale of the units;

(2) In case of initial capital raising through a unit offering and loan in the form of an offer for sale of newly issued debentures concurrently:

(a) the transfer of the money received from the offer of *units* to the persons who will sell, dispose of, lease or grant the rights to real estate, at an amount not less than specified in Clause 24/1(2) to the trustee for establishment of a *REIT* shall be completed prior to offering the rest of the *units* and the newly issued debentures to investors;

(b) The money received from the offer of the rest of the units shall be transferred to the trustee within fifteen business days as from the closing date of the offer of such units;

(3) In cases other than (1) and (2), the money received from such cases shall be transferred to the trustee as *REIT* property within fifteen business days as from the closing date of the unit offering.

The approved person shall submit the evidentiary documentation of the money transfer under the first paragraph to the SEC Office together with the report of the result of the offer for sale of the units under (1) or (2)(a) or (b) or (3) of the first paragraph, as the case may be.

**Clause 36** After an initial offer for sale of the *units*, an approved person shall perform the duties of a *REIT manager* under the scope as specified in this Notification, and in accordance with the trust instrument once the *REIT* has been established.

The approved person shall provide the trust instrument containing a provision indicating in essence that the new *REIT manager* has to comply with the rules prescribed for the approved person in this Notification, *mutatis mutandis*, in case of changing the *REIT manager*.

**Clause 37** An approved person shall proceed for the newly issued *units* to be registered as listed securities [on *Stock Exchange*] within 45 days as from the closing date of the offer for sale of the *units*.

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<sup>41</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 85/2558 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 7)* dated 2 December 2015 (effective on 1 January 2016).

**Clause 38** An approved person shall disclose the information relating to a *REIT* after the offer for sale of the *units* in accordance with the Notification concerning disclosure of information on real estate investment trusts.<sup>42</sup>

**Clause 39** In case of the amendment to the trust instrument, an approved person shall provide such amendment being in accordance with the conditions as prescribed in the trust instrument and not violating or contradicting the provisions of this Notification, and shall submit a copy of the amended trust instrument to SEC Office within 15 days as from the date of affixing signature or making the amendment, as the case may be.

**Clause 40** In case of change of trustee according to the trust instrument or as prescribed by law, an approved person shall notify the change to the unitholders within the period as specified in the trust instrument and shall notify the SEC Office within such period.

## **Part 2**

### **Submitting of the Registration Statement**

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#### **Chapter 1**

#### **submitting and fee**

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**Clause 41**<sup>43</sup> Before each offer for sale of *units*, the offeror shall submit one set of the *registration statement* and the draft prospectus in a printed form and submit the information thereof in an electronic form through the transmission system of the *Stock Exchange* provided for the said documents.

After the closing date of the offer for sale of the *units* as stated in the *registration statement*, if the offeror wishes to offer for sale of the remaining *units* from the previous offer, the offeror shall submit another *registration statement* and a draft prospectus in accordance with the procedures specified in the first paragraph.

The offeror shall pay the filing fee of the *registration statement* in accordance with the rules and procedures prescribed by the SEC Office under Section 19<sup>44</sup> [of the *Securities and Exchange Act B.E. 2535 (1992)*].

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<sup>42</sup> This clause means *Notification of the Capital Market Supervisory Board No. KorJor 51/2555 Re: Rules, Conditions and Procedures for Disclosure regarding Financial and Non – Financial Information of Real Estate Investment Trust.*

<sup>43</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 3/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 8)* dated 10 February 2016 (effective on 1 March 2016).

<sup>44</sup> This clause means *Notification of the Office of the Securities and Exchange Commission No. SorBor. 28/2547 Re: Fees for Filing Registration Statement, Permission by Registration and All Applications for Obtaining Approval.*

**Clause 42** The *registration statement* and the draft prospectus submitted to the SEC Office shall be jointly prepared and certified the accuracy and completeness of the information by *financial advisor*.

<sup>45</sup>The provision under the first paragraph shall not be applicable to the offeror who possesses the characteristic under the first paragraph of Clause 9.

**Clause 43** In case a *REIT* has an income guarantee, the *registration statement* and the draft prospectus submitted to the SEC Office shall contain information relating to the income guarantee as prescribed in Clause 7, *mutatis mutandis*. Additionally, in case the guarantor of income is a *related person* of the approved person, the authorized person who has power to sign on behalf of the *financial advisor* shall verify and certify on the *registration statement* and the prospectus for the accuracy and completeness of [i] the information relating to the opinion of the *financial advisor* on the ability of the guarantor of income and [ii] the information used for rendering such opinion.

**Clause 44** The financial statements and the consolidated financial statements of the *REIT* as disclosed in the *registration statement* and the draft prospectus (if any) shall be in accordance with the rules as prescribed in the Notification of the Capital Market Supervisory Board<sup>46</sup> issued by virtue of Section 56 [of *the Securities and Exchange Act B.E. 2535 (1992)*], *mutatis mutandis*.

**Clause 45** Before the closing date of the offer for sale of the approved *units*, if an offeror has disclosed material facts, which are not demonstrated in the *registration statement* and the prospectus, to any specific person for the benefit of analyzing the suitability for investment in the offered *units* or for the decision to invest in the offered *units*, the offeror shall immediately disclose such facts in the *registration statement* and the prospectus as well. In this regard, such disclosure shall be made not later than the effective date of the *registration statement*, or in case the *registration statement* has already been effective, the disclosure shall be made not later than the next business day following the disclosure of such facts to such person.

**Clause 46** In case the *units* have been offered for sale in a foreign jurisdiction, the offeror shall disclose the details of the information in the *registration statement* and the draft prospectus not less than the details of the information which have been disclosed for the offer for sale of such *units* according to the law of the foreign jurisdiction.

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<sup>45</sup> Amended by the Notification of the Capital Market Supervisory Board No. Tor Jor. 25/2557 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 3) dated 20 August 2014 (effective on 1 September 2014).

<sup>46</sup> The Notification of the Capital Market Supervisory Board No. TorJor. 51/2555 Re: Rules, Conditions and Procedures for Disclosure regarding Financial and Non-Financial Information of Real Estate Investment Trust.

## Chapter 2 Power of the SEC Office

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**Clause 47** The SEC Office is empowered to render a waiver for disclosure of the details of the information under this Notification, in case the offeror of a **REIT** would be able to demonstrate that [i] such information shall not materially affect the investment decision of the investors and [ii] there is a reasonable ground not to disclose the details of such information in the **registration statement** or there are other sufficient measures having already been replaced such disclosure.

**Clause 48** In deliberating the information in the **registration statement** and the draft prospectus, in case the SEC Office deems that it is necessary and appropriate for the investors to have material information sufficiently for making a decision to invest, the SEC Office is empowered to order a person, submitting the **registration statement**, to proceed as follows within a period as specified by the SEC Office:

- (1) elucidate or amend information or submit additional evidentiary documentation;
- (2) arrange to have an independent expert to express an opinion on the accuracy, completeness or credibility of the information which appears in the **registration statement** and the draft prospectus.

In case the offeror fails to comply with the order of the SEC Office under the first paragraph, it shall be deemed that the offeror no longer wishes to submit the **registration statement** and the draft prospectus to the SEC Office.

In ordering the offeror to proceed in accordance with the first paragraph, the SEC Office may also order the offeror to disclose the order thereof, the action of the offeror, the comment of the SEC Office or the elucidation of the offeror through the website of the SEC Office according to guidance of the SEC Office.

## Chapter 3 Effective date of registration statement and draft prospectus

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**Clause 49** Subject to Section 75 [of the *Securities and Exchange Act B.E. 2535 (1992)*], the **registration statement** and the draft prospectus shall become effective upon compliance with the following rules:

(1) in case of an offer for sale of newly issued **units** of a **REIT** which shall be approved under Section 33 [of the *Securities and Exchange Act B.E. 2535 (1992)*], an offeror shall obtain an approval prior to the offer for sale of the newly issued **units** thereof;

(2) the offeror of the **units** of the **REIT** shall pay the fee for submitting the **registration statement** in accordance with the rules and procedures as specified by the SEC Office under Section 19<sup>47</sup> [of the *Securities and Exchange Act B.E. 2535*

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<sup>47</sup> The Notification of the Office of the Securities and Exchange Commission No. SorBor. 28/2547 Re: Fees for Filing Registration Statement, Permission by Registration and All Application for Obtaining Approval.

(1992)];

(3) the offeror of the *units* shall amend the information in the *registration statement* and disclose such information as prescribed in the third paragraph of Clause 48 (if any);

(4) upon the lapse of the following periods as from the date when the SEC Office receives the latest amended *registration statement* as prescribed in Clause 41 (excluding *the information relating to the offer for sale of the units of the REIT* or other immaterial information for which the SEC Office has rendered a waiver):

(a) 14 days in general cases;

(b) 3 business days in case of submitting the *registration statement* and the draft prospectus [for remaining units] within 3 months as from the effective date of the previous *registration statement* and the draft prospectus of the *units* under the same *REIT*;

(5) the offeror of the *units* of the *REIT* has fully specified the information as described in the *registration statement* form.

For the purpose of the consideration under sub clause (4) of the first paragraph, *the information relating to the offer for sale of the units of the REIT* means:

(1) number of the *units* and offering price;

(2) offering period;

(3) details relating to subscription, underwriting and allocation of *units*;

(4) any other information relating to the trading of the *units* of the *REIT*

or the information with the similar characteristics or relevant to the information under sub clauses (1), (2) and (3).

### Part 3<sup>48</sup>

#### Issuing and Offering for Sale of Units for Conversion from Property Fund to REIT

**Clause 50<sup>49</sup>** Issuing and offering for sale of *units* for *conversion* from *property fund* to a *REIT* shall be in accordance with the rules as stipulated in the *Notification on Conversion* and the following rules:

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<sup>48</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 51/2556 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 2)* dated 16 December 2013 (effective on 16 December 2013).

<sup>49</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 35/2559 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 10)* dated 11 August 2016 (effective on 1 September 2016).

(1) the rules for granting an approval under Chapter 2 and powers of the SEC Office under Chapter 3 of Part 1 in this Notification shall be applicable excluding the following rules:

(a) the rule determining unit redemption in cash or others equivalent under Clause 10(1)(f). In this regard, the offer of units to a *property fund* for *conversion* may accept payment of unit subscription with the assets or obligations of such fund under the *Notification on Conversion*;

(b) the rules on asset appraisal under Clause 12(5) only in the case of real estate transferred from the converted *property fund* and such real estate has been appraised properly in accordance with the rules specified in the *Notification on Conversion*.

(2) the conditions for approval under Chapter 4 in Part 1 of this Notification shall apply. In this regard, the compliance with the conditions under Clause 25(5)(a) and (c) and Clause 25(6)(b) shall be deemed as the unitholders of the converted *property fund* are the subscribers of the units or receive allotted units, as the case may be, but this conditions for approval shall not be applicable while the rules under the *Notification on Conversion* shall apply:

(a) conditions for offering and allotment of units under Clause 25(1)(2)(3)(4)(4/1) and (4/2), only in the case of an offer for sale for *conversion* of a *property fund*;

(b) conditions for transfer of the money from the offer for sale of units to the trustee under Clause 25(5)(d) and Clause 35, only in the case of an offer for sale of units for *conversion* of a *property fund*;

(c) conditions for registration of the units under Clause 37 in accordance with the *Notification on Conversion*.

(3) the offeror of the newly issued *units* for *conversion* from *property fund* to a *REIT* (regardless of whether there will be an offer for sale of units for investment in a new real estate or not) shall submit the *registration statement* in accordance with Form 69-*REIT* (Conversion) attached to this Notification together with the draft prospectus by complying with the rules relating to submitting the *registration statement* and the draft prospectus under Part 2 of this Notification, excluding the following rules which shall not apply to a *conversion* from one single *property fund* to one *REIT* and there is no other offer of units for additional investment in other real estate except the real estate transferred from the *property fund*:

(a) in the case where a *financial advisor* is a joint preparer and verifier of the information in the *registration statement* and the draft prospectus under Clause 42;

(b) the period of effectiveness of the registration and the draft prospectus under (4) of the first paragraph under Clause 49. In this regard, the *registration statement* and the draft prospectus shall become effective on the next day after the SEC Offer has received the latest updated *registration statement* (excluding the information related to the offer for sale of units or the *REIT* or other immaterial information granted a waiver from the SEC Office).

Notified this 21<sup>st</sup> day of November 2012.

-Signature-  
Vorapol Socratyanurak  
Secretary-General  
Office of the Securities and Exchange Commission  
Chairman  
Capital Market Supervisory Board

Note: please note that contents added in brackets [...] has only been provided in the English version for clear understanding.