

**TRANSLATED VERSION**

As of March 31, 2015

*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 Office of the Securities and Exchange Commission**

**No. SorRor. 26/2555**

**Re: Provisions relating to Particulars, Terms and Conditions in  
a Trust Instrument of Real Estate Investment Trust**

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By virtue of Section 9 and Section 15 of the *Trust for Transactions in the Capital Market Act B.E. 2550* (2007), which contain certain provisions relating to restriction of rights and liberties of persons which Section 29 in conjunction with Section 32, Section 33, Section 41 and Section 43 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the SEC Office hereby issues the following regulations:

**Clause 1** In this Notification:

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

“**real estate**” means an immovable property including leasehold interest of immovable property.

“**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 amount of fully paid **units**.

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

“**REIT manager**” means a person who performs duties of REIT manager according to a trust instrument.

“**raising capital by general mandate**” means raising capital of a **REIT** in accordance with a resolution of the meeting of the unitholders which authorizes the **REIT manager** to determine the issuance and allocation of **units** each time as appropriate, for instance, the determination of price, dates and time of the offering for sale or conditions on the offering for sale of **units**.

“**principal asset**” means principal asset in which **REIT** is able to invest under rules as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust*.

“**unit**” means a trust certificate representing the right of the holder as a beneficiary of **REIT**.

“**financial advisor**” means a financial advisor which is on the approved list of the SEC Office.

“**rent**” means a consideration which is received from renting, using area or providing services relevant to renting or using area, as the case may be.

“**SET**” means the Stock Exchange of Thailand.

**Clause 2** This Notification:

- (1) contains regulations to be used in conjunction with the regulations under the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Unit of Real Estate Investment Trust*;
- (2) specifies the particulars in the trust instrument of a **REIT**.

**Clause 3** The trust instrument of a **REIT** shall contain at least the following particulars:

- (1) establishment of the **REIT**;
- (2) issues concerning **units**;
- (3) raising capital of the **REIT**;
- (4) reduction of **paid up capital** of the **REIT**;
- (5) issues concerning unitholders;
- (6) preparation of the register of **units**, transfer of **units** and restriction, and issuing certificate of entitlement;
- (7) investment of the **REIT**;
- (8) taking advantage of trust property;
- (9) money borrowing and encumbrances of the **REIT**;
- (10) property valuation;
- (11) the transactions between the **REIT** and the **REIT manager** or **related**

*persons* of the **REIT manager**;

- (11/1) transactions being conflict of interest between the **REIT** and a trustee;
- (12) disclosure of information of the **REIT**;
- (13) payment of distribution to unitholders;
- (14) seeking of resolution and meeting of unitholders;
- (15) restrictions of right to receive distribution, management of undistributed income and the voting right of unitholders;
- (16) issues concerning trustee;
- (17) issues concerning **REIT manager**;
- (18) fees and expenses;
- (19) amendment to the trust instrument;
- (20) dissolution of the **REIT**.

**Clause 4** The essential covenants in part of establishment of a **REIT** shall contain at least the following matters:

(1) characteristics of the **REIT** and the management mechanism containing material statements as follows:

(a) ..... (name of the **REIT**) ..... is the **REIT** in accordance with the *Trust for Transactions in Capital Market Act B.E.2550 (2007)*, established as a result of this trust instrument and completed as a trust when the settlor has already transferred the money received from the sale of **units** to the trustee in order to manage the property for the benefit of the unitholders with trustworthiness;

(b) the **REIT** is not a juristic person, but is a pool of assets legally owned by the trustee having power to manage the asset thereof;

(c) the **REIT** shall be managed by the trustee and the assigned **REIT manager** appointed by the trustee according to this trust instrument. The trustee and the **REIT manager** shall perform their duties with the scope of authority, duty and responsibility as stated in the relevant particulars of the authority and duty of the trustee and the **REIT manager**. In this regard, the **REIT manager** has the authority, duty and responsibility to manage principally the **REIT** and undertakes for the REIT to invest in **principal asset**, meanwhile the trustee has the authority, duty and responsibility to supervise principally the operation

of the **REIT manager** and other assigned person (if any) to conduct their functions in accordance with the trust instrument and the [relevant] law, and preserves the trust property. Additionally, in case the **REIT** has determined the policy to invest in other assets aside from the **principal asset**, the management of investment in such property may be proceeded by the trustee, the **REIT manager** or any person assigned by the trustee or the **REIT manager** as stated in the trust instrument.

(d) the **REIT manager** and the trustee have to perform their duties as a trustworthy professional [i] with due care and loyalty for the best interest of the unitholders as a whole, and [ii] in accordance with the trust instrument, relevant laws and commitment obligated by disclosure in offering documents circulated to investors (if any).

(2) name, term, type, and objective of the **REIT**;

(3) name, address and telephone number of a settlor, and a statement indicating that the settlor agrees to transfer the money received from investors, who bought the **units** because they trust on the trustee of the offered REIT, to the trustee in order to manage trust properties for the benefit of the beneficiaries. Subsequently, the settlor would become the **REIT manager** after the completion of establishing the **REIT**;

(4) name, address and telephone number of the trustee, and a statement indicating that the trustee agrees to hold the trust properties be transferred by the settlor because of trustworthiness of the trustee to manage such properties for the benefit of the beneficiaries in accordance with this trust instrument;

(5) name, address and telephone number of the **REIT manager** and a statement indicating that the **REIT manager** agrees to manage the properties of the **REIT** as assigned by the trustee with a scope of authority, duty and responsibility as stated in the trust instrument, as well as the appointment contract of the **REIT manager** and other agreements between the **REIT manager** and the trustee (if any);

(6) qualifications or characteristics of the beneficiaries of the **REIT** and a statement indicating that the unitholders whose names are in the register of the unitholders are the beneficiaries of the **REIT**;

(7) properties which become trust properties of the **REIT**. In this regard, the initial trust property has to be the money received from the sale of **units** at the initial

offering for sale of *units*;

(8) date of the establishment of the *REIT*.

The provisions under sub clause (1) (a) and (7) of the first paragraph are inapplicable to a *REIT* converted from a *property fund*. Instead, the following terms and conditions shall be contained in the covenants thereof:

(1) the provisions regarding characteristics of the *REIT* and the management mechanism which state precisely that “...(the name of the *REIT*)..., .....is the *REIT* according to the *Trust for Transaction in Capital Market Act B.E. 2550 (2007)*, converted from *property fund* of which name is ...(the name of converted *property fund*)... by a result of this trust instrument, and completed as a trust when a settlor creates right appertaining to property to a trustee by means of obligating to transfer the assets of the *property fund* thereof to the trustee for consideration of the *REIT*’s units”;

(2) properties which become trust properties of the *REIT*. In this regard, the initial trust property shall be identified materially that “initial trust property has to be the right appertaining to property created by a contract between the settlor and the trustee which the settlor obligates to entitle the property fund’s assets to the *REIT* for consideration of all units of the *REIT*”.

**Clause 5** The essential covenants in part of issues concerning *units* shall contain at least the following matters:

(1) the right to receive benefits from the *REIT* would be divided equally into *units*, and each class of *units* grants the right to the holders equally as beneficiary of the *REIT*;

(2) the *units* are only redeemable on the date of dissolution of the *REIT*;

(3) classification of *unit* (if any);

(4) amount and total value of initial units including the amount and total value of additional units (if any), calculated by the par value. In case *units* are divided into several classes, the amount and total value shall also be demonstrated for each class.

**Clause 6** The essential covenants in part of raising capital of the **REIT** shall contain at least the following matters:

- (1) the raising capital of the **REIT** has to be proceeded by the **REIT manager**;
- (2) objective for raising capital;
- (3) procedure for raising capital which is in accordance with at least

the following conditions:

(a) raising capital of the **REIT** is permitted only when it is not contradictory or inconsistent with the intention to establish the **REIT** and the provisions under the *Securities and Exchange Act B.E. 2535 (1992)*, the *Trust for Transactions in Capital Market Act B.E. 2550 (2007)*, as well as the notifications, rules or orders issued by virtue of such laws;

(b) the unitholders' meeting resolves to approve the raising capital and the resolution conforms to the conditions as follows:

1. in case of offering for sale of **units** to some specific unitholders, there is no unitholders, holding an aggregate amount exceeding 10% of the total attending unitholders, who vote against the raising capital;

2. in case of requesting the resolution of **raising capital by general mandate**, the agenda of such requesting will be proposed to the unitholders' meeting to the extent that it is clearly demonstrated that the allocation of **units** for raising capital would be in accordance with the rates and rules as prescribed in [i] the *Notification of the Board of Governors of the Stock Exchange of Thailand concerning Rules, Conditions and Procedures for Disclosure of Information and any Operations relating to Raising Capital of a Listed Company, mutatis mutandis*, and [ii] the guidelines that the SEC Office has announced in detail to ensure clarity in practice (if any). In addition, the raising capital of such case would be completed within 1 year as from the date when the unitholders' meeting has passed the resolution.

(c) in case of raising capital for an acquiring additional *principal asset*, the procedures as prescribed in Clause 11 have to be complied, and in case such acquisition is a transaction between the *REIT* and the *REIT manager* or *related persons* of the *REIT manager*, it must comply with the procedures as prescribed in Clause 19 as well;

(d) the *REIT manager* has obtained an approval from the the SEC Office to offer for sale of newly issued *units*.

In case the trust instrument specifies the plan for raising capital explicitly in advance and demonstrates clearly that the *REIT* does not have any objective to raise capital of the *REIT* other than what has already been specified [in the trust instrument], the trust instrument may be stated that such raising capital is applicable without complying with the procedures under sub clause (3) (b) of the first paragraph.

**Clause 7** The essential covenants in part of reduction of *paid up capital* of the *REIT* shall contain at least the following matters:

(1) the reduction of the capital must be proceeded by the *REIT manager*;  
 (2) causes of reducing *paid up capital* have to be only any of the following cases:

(a) the reduction of the *paid up capital* is in accordance with the plan which has specified clearly in the trust instrument;

(b) the *REIT* has excess liquidity remaining from the disposal of *real estate* or the leasehold interest of the *real estate* or the amortization of the leasehold interest of the *real estate* (if any). In this regard, it has to be certain fact demonstrating that the *REIT* is no longer retaining accumulated profit earnings;

(c) the *REIT* has raised the capital to acquire additional *real estate* but a difficulty occurs later which causes the inability to acquire such *real estate*;

(d) the *REIT* has non-cash expense items and such items will not be calculated as a part of the calculation for the adjusted net profit of the *REIT* as prescribed in Clause 21;

(e) any other case where a reduction of the *paid up capital* of the *REIT* is approved by the resolution of the unitholders.

(3) the procedures for reducing the *paid up capital* have to be stated at least the following terms:

(a) reduction of the *paid up capital* of the *REIT* is permitted only when such reduction does not contradict or is inconsistent with the intention for establishment of the *REIT* and the provisions under the *Securities and Exchange Act B.E. 2535 (1992)* and the *Trust for Transactions in Capital Market Act B.E. 2550 (2007)* as well as the notifications, rules or orders issued by virtue of such laws;

(b) the meeting of the unitholders has passed a resolution to approve reduction of the *paid up capital*;

(c) the reduction of the *paid up capital* has to be proceeded only by reducing unit value;

(d) the cash item resulted from reduction of the *paid up capital* must be paid on average to the unitholders whose names appear in the register on the closing date for suspension of *units* transfer. For the purpose of such payment, the net asset value of the *REIT* as of the closing date of the register will be used to calculate for reduction of the *paid up capital* per *unit*. Moreover, the cash for payment has not to derive from the profit of the *REIT*.

In case the trust instrument has explicitly determined the causes of reducing *paid up capital* as prescribed in sub clause (2) (a) (b) (c) or (d) of the first paragraph, the trust instrument would be able to determine the process of reducing *paid up capital* for such cases without a resolution from the meeting of the unitholders as prescribed in sub clause (3) (b) of the first paragraph.

**Clause 8** The essential covenants in part of issues concerning the unitholders shall contain at least the following matters:

(1) being a unitholder does not cause a legal relationship in term of agent and principal between the unitholder and the trustee, or in term of partnership or other legal relationship among the unitholders;

(2) being a unitholder does not cause them liable in case the assets of the *REIT* are insufficient for repayment of debt to the trustee, a *REIT manager* or the creditors of the *REIT*. In this regard, the trustee, the *REIT manager* and the creditors of the *REIT* have the right to claim only from the assets of the *REIT*;



(3) unitholders have the right to claim for [i] distribution on the amount not exceeding the profit after deducting reserves, and [ii] return of investment on the amount not exceeding the capital of the **REIT** adjusted by the excess or the under-value of **units**. In case **units** are divided into classes, such right of each class has to be in conforming to terms and conditions as stated [in the trust instrument] for each class as well;

(4) in any case, the trust instrument has not to be interpreted in such a way that it is contradiction or inconsistency with the terms and conditions under sub clause (1), (2) and (3).

**Clause 9** The essential covenants in part of preparation of the register of **units**, the transfer of **units** and restriction, and the issuing certificate of entitlement shall contain at least the following matters:

(1) the trustee has the duty to provide the register of **units** either by the trustee itself or by assigning other persons to do so within the scope as prescribed in the *Notification of the Securities and Exchange Commission concerning Rules for Being Settlor and Trustee of Real Estate Investment Trust*. In this regard, in case the trustee is the registrar of **units**, there shall be minimum terms stipulating that the trustee has to comply with the *Notification of the Capital Market Supervisory Board concerning Rules, Conditions and Procedures for Providing Services as Registrar of Securities, mutatis mutandis*;

(2) the unit registration has to be presumed correct. Additionally, the payment of money or other assets including the granting any rights to the unitholders or restriction on any rights of them whose names appear in the register of the unitholders, which comply with the provisions of the obligations or laws, have to be deemed that the trustee has already performed in accordance with the authority and duty;

(3) trustee or registrar of **units** has the right to refuse to display names in the register of the unitholders in case the unitholding is not in accordance with the ratios as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust*;

(4) trustee or registrar of *units* would [i] issue a certificate representing the rights in the *units* for the unitholders [ii] or provide other kinds of evidence prepared in accordance with the securities depository system in order to use as an evidence to claim their rights against the trustee, the *REIT manager*, and other persons. In this regard, an example of such certificate shall be demonstrated in the trust instrument.

**Clause 10** The essential covenants in part of investment of the *REIT* shall contain at least the following matters:

(1) the investment in *principal asset* and accessories (if any) has to identify the following matters:

(a) the investment policy, types of *principal asset* invested by the *REIT*, and restrictions on investment (if any) with essences in accordance with the rules as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust*;

(b) method for acquiring *principal asset* and accessories (if any).

In this regard, in case of *principal asset*, it has to be covenants in accordance with Clause 11;

(c) method for disposing of *principal asset* and accessories (if any).

In this regard, in case of *principal asset*, it has to be covenants in accordance with Clause 12.

(2) in case the *REIT* has a policy to invest in or possess other assets besides the *principal asset*, such policy and types of assets to be invested have to be specified clearly and complied with the rules as prescribed in Clause 13.

**Clause 11** The essential covenants in part of method for acquiring *principal asset* and accessories (if any) shall contain at least the following matters:

(1) prior to acquisition of the *principal asset* each time, a *REIT manager* has to proceed as follows:

(a) verify or audit information and agreements relating to the *principal asset* and accessories (if any), for instance, a financial and legal information, for the benefit of investment decision-making and disclosure of correct information. In case the owner, the lessor or the transferor of the *real estate* is a *related person* of the *REIT manager*, the *REIT manager* has to arrange a *financial advisor* to give an opinion on the analysis of such information;

(b) evaluate the value of the *principal asset* at least in accordance with the provisions as prescribed in Clause 18;

(c) In case the *REIT* will invest in the leasehold interest of *real estate* in the nature of sublease, the *REIT manager* has to [i] provide measure for preventing risks or [ii] be entitled to claim a remedy for damage, which may occur as a result of breach of lease contract or defective rights to claim for specific performance according to the lease contract.

(2) the covenants in part of acquisition of an additional *principal asset* shall also contain the following essences:

(a) such acquisition has to:

1. be in compliance with the trust instrument and relevant laws;
2. be for the best interest of the *REIT*;
3. be reasonable and at fair price;
4. have expenses collected from the *REIT* (if any) at a fair and reasonable rate;
5. be decided by any person who does not have special interest with regard to the transaction of acquisition thereof.

(b) the approval procedure before the acquisition has to:

1. be approved by the trustee that the transaction is in accordance with the trust instrument and relevant laws;
2. be approved by the board of directors of the *REIT manager* in case of acquiring additional *principal asset* with value at 10% of the total asset value of the *REIT* or more;

3. be approved by the resolution of the unitholders' meeting with at least three-fourth majority votes of the attending unitholders with the voting right, in case of acquiring additional *principal asset* with value at 30% of the total asset value of the *REIT* or more.

The calculation of the value of the *principal asset* as mentioned in sub clause 1. 2. or 3. has to use the acquired value of the total assets of each project being ready to take advantage of income, including any asset relating to such project.

(c) for seeking an approval from the trustee or the unitholders, the *REIT manager* and the trustee have duties as follows:

1. the duty of the *REIT manager* to prepare the documents for seeking an approval [from the REIT manager's board of directors] or calling notice [for unitholders' meeting], as the case may be, and to give an opinion on the characteristics of transactions under sub clause (a) together with the rationale and clear supplementary information;

2. the duty of the trustee to attend the unitholders' meeting and give an opinion on the characteristics of transactions regarding compliance with the trust instrument and relevant laws.

**Clause 12** The essential covenants in part of method for disposing of the *principal asset* and accessories (if any) shall contain the substantial procedure performed by the *REIT manager* as follows:

(1) prior to disposal of the *principal asset*, an evaluation of the *principal asset* has to be done at least in accordance with the provisions under Clause 18;

(2) the covenants in part of disposal of the *principal asset* shall contain a substance in accordance with the following provisions:

(a) the disposal shall be revealed and comply with Clause 11(2) (a) and (b), and have the procedure for seeking an approval from the trustee or a resolution of the unitholders' meeting under Clause 11(2) (c), *mutatis mutandis*;

(b) the disposal of the *principal asset* in the following manners shall comply with the provisions under sub clause (a) and be a necessary and appropriate case which is approved by the board of directors of the *REIT manager* as well:

1. the disposal of the *principal asset* prior to 1 year as from the date of the acquisition of the *principal asset* by the *REIT*;
2. the disposal of the *principal asset* to the former owner.

**Clause 13** In case the *REIT* also has a policy to invest in other assets besides the *principal asset*, the essential covenant in part of such investment shall contain the following matters:

(1) those other assets have to be types of assets as prescribed in Clause 14 and Clause 15;

(2) the ratio of investment in other assets has to be in accordance with the regulations as prescribed in the Notification concerning investment ratio in assets of mutual funds issued by virtue of Section 117 and Section 126(4) of the *Securities and Exchange Act B.E. 2535(1992)*, *mutatis mutandis*;

(3) in case the invested instrument is defaulted or there are the facts indicating that the debtor may not repay the debt, the *REIT manager* has to proceed in accordance with the similar duties as prescribed for mutual funds under Section 117 of the *Securities and Exchange Act B.E. 2535(1992)*, *mutatis mutandis*;

(4) any other provision which does not contradict or contravene the covenants under sub clause (1), (2) and (3).

**Clause 14** In case the *REIT* has a policy to invest in other assets besides the *principal asset*, such investment policy and types of assets shall be contained in covenants clearly within the scope of the following asset types:

(1) government bond;

(2) treasury bill;

(3) bond issued by a state enterprise or a juristic person established by specific law and guaranteed unconditionally for the principal and the interest in full by the Ministry of Finance;

(4) cash deposit in a bank or a secondary mortgage corporation;

(5) certificate of deposit issued by a bank or a finance company without the characteristics of product embedded derivatives;

(6) bill of exchange or promissory note which is issued, accepted, aval granted or guaranteed by a bank, a finance company or a credit foncier company without the characteristics of product embedded derivatives;

(7) investment units or investment unit warrant of fixed income mutual fund or other mutual funds with a policy to invest in debt instrument or cash deposit. In this regard, in case of investment units of foreign fund, such fund shall be in conforming to the following conditions:

(a) it has to be under the supervision of a regulatory agency supervising securities and securities exchanges which is an ordinary member of the International Organization of Securities Commissions (IOSCO), or its investment units are traded on a securities exchange which is a member of the World Federation of Exchanges (WFE);

(b) it has a policy to invest in assets of the same type and tranche as that allowed to be invested or held by the **REIT**; and

(c) it is established for general investors.

(8) the investment units of a **property fund** or **units** of other **REITs**, established under Thai laws;

(9) instrument of foreign Real Estate Investment Trust, established whether in form of a company, trust or any other form with the following characteristics:

(a) established for general investors and under the supervision of a regulatory agency supervising securities and securities exchanges which is an ordinary member of the International Organization of Securities Commissions (IOSCO);

(b) having main objective to invest in [i] **real estate**, [ii] ordinary shares of a property development company listed in a foreign securities exchange which is a member of the World Federation of Exchanges (WFE), or [iii] ordinary shares of a company whose business is similar to the property development sector;

(c) its instrument having been traded on a securities exchange which is a member of the World Federation of Exchanges (WFE), otherwise being redeemable with it.

(10) derivatives only for hedging purpose.

The acceptance, granting a val or guarantee, as the case may be, according to sub clause (6) of the first paragraph shall be acceptance in perpetuity, granting a val to the total amount, or unconditional guarantee for the principal and interest in full.

**Clause 15** The trust instrument may determine the **REIT** to invest in shares of the juristic person who is the lessee of the **principal asset** of the **REIT** to the extent that:

(1) the lease contract specifies the **rent** in reference to the interest incurred from the **principal asset** of the **REIT** and;

(2) such share is a golden share which is the only one preferred share empowering to control some certain operations of the juristic person, as specified in the articles of association of such juristic person.

**Clause 16** The essential covenants in part of taking advantage of trust property shall contain terms and conditions in accordance with the rules in the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust*. Additionally, it shall contain the duties of a **REIT manager** to maintain the **principal asset** in good condition and ready to take advantage of income and to procure sufficient insurance throughout the possession of such property.

Sufficient insurance under the first paragraph shall at least cover property insurance and liability insurance.

**Clause 17** The essential covenants in part of money borrowing and encumbrances of the **REIT** shall contain at least the following terms:

(1) terms indicating whether or not the **REIT** may borrow money, and by whatever means, for instance, applying for a loan from a financial institution or issuing an indebtedness instrument or entering into a borrowing contract;

(2) in case of allowing to borrow money, the borrowing proportion has to be specified in accordance with the rates as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust*;

(3) in case of encumbrances, the terms shall be in compliance with the rules as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust*.

**Clause 18** The essential covenants in part of property valuation shall contain at least the following matters:

(1) the appraiser has to be a person approved by the SEC Office in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Granting of Approval for Appraisal Companies and the Principal Appraisers*;

(2) the appraisal would not be made by the same appraiser for more than two consecutive times;

(3) in the following cases, the appraisal has to be made in full with verification of entitlement documents and for the purpose of publicly disclosing information:

(a) when the **REIT** is going to acquire or dispose of a **principal asset**, the appraisal has to be made not more than 1 year in advance;

(b) upon the expiration of 2 years as from the date of the latest full appraisal;

(c) when there appears any circumstance or change which may significantly affect the depreciation of value of the invested **real estate** of the **REIT**;

(d) upon request by the trustee or the auditor of the **REIT**.

(4) the appraisal would be reviewed once every year as from the date of the latest full appraisal.

In case of the **REIT** converted from a **property fund**, the covenant shall contain a term relating to property valuation which indicates essentially that an appraisal and reviewed appraisal will be continued from the appraisal period of such **property fund**.



**Clause 19** The essential covenants in part of transactions between a **REIT** and a **REIT manager** or **related persons** of the **REIT manager** shall contain substances at least in accordance with the following matters:

(1) the transactions has to conform to Clause 11(2) (a);

(2) the approval procedure before enter into the transaction has to undergo the following proceedings:

(a) having approved by the trustee that the transaction is in compliance with the trust instrument and relevant laws;

(b) in case the value of the transaction exceeds 1 million baht or is 0.03% of the net asset value of the **REIT** or more, whichever value is higher, the approval of the board of directors of the **REIT manager** is required:

(c) in case the value of the transaction exceeds 20 million baht or more than 3% of the net asset value of the **REIT**, whichever value is higher, the resolution of approval of the unitholders' meeting passed by at least three-fourths majority vote of the attending unitholders with the voting right is required.

In case the transaction under the first paragraph is an acquisition of the **principal asset**, the calculation of the value has to be based on both value of the acquisition of the total assets of each project, which are ready to seek income, and value of other assets relating to such project.

(3) the procedure for seeking an approval from the trustee or the resolution of the unitholders' meeting has to be in accordance with Clause 11(2) (c), *mutatis mutandis*, and in case of seeking a resolution of the unitholders' meeting, the calling notice of the meeting has to also contain the opinion of the **financial advisor** to supplement the request for the resolution of the unitholders' meeting.

The provisions relating to the approval procedure under sub clause (2) of the first paragraph, and the procedure for seeking approval from the trustee or a resolution of the unitholders' meeting under sub clause (3) of the first paragraph may specify an exemption for a transaction between the **REIT** and the **REIT manager** or **related person** of the **REIT manager** which has been clearly demonstrated in the registration statement and the prospectus.

**Clause 19/1** The covenants in part of transactions being conflict of interest between a **REIT** and a trustee shall not contain terms and conditions contrary to or in contravention of Section 31 of the *Trust for Transactions in Capital Market Act B.E. 2550 (2007)* and the Notification issued by virtue of such law.

**Clause 20** The covenants in part of disclosure of information of a **REIT** shall at least be in accordance with the following rules:

(1) there shall be a provision determined that a **REIT manager** has duty and responsibility to [i] prepare and submit the information on the **REIT** to the SEC Office, the **SET** and the unitholders, and [ii] deliver annual report of the **REIT** to the unitholders together with the calling notice of the annual general meeting;

(2) there shall not be any provision which requires the **REIT** to be liable for any penalty or damage incurred [i] from the failure of the **REIT manager** to disclose accurate, complete and updated information in accordance with the rules or [ii] from disclosure of false information, concealment of information that should be disclosed, or disclosure of misleading information on the operation or financial condition of the **REIT**.

**Clause 21** The covenant in part of payment of distribution to unitholders shall contain at least the following matters:

(1) a **REIT manager** has to process for paying distribution to unitholders at an amount not less than 90% of the **adjusted net profit** of the fiscal year within 90 days as from the end of the fiscal year or the accounting period when the payment of distribution is made, as the case may be.

The **adjusted net profit** under the first paragraph means the net profit in reference to the cash position of a **REIT**.

(2) in case the **REIT** still retains accumulated deficit, the **REIT manager** would not pay distribution to unitholders.

**Clause 22** The covenants in part of seeking resolution and meeting of unitholders shall contain at least the following matters:

(1) a unitholder resolution has to be processed through the holding of meeting only;

(2) the proposed agenda has to be prescribed at least in accordance with this Notification. Moreover, a **REIT manager** has to prepare unitholder meeting at least as follows:

(a) an annual general meeting which has to be held within 4 months as from the end date of the fiscal year of the **REIT**;

(b) an extraordinary general meeting when:

1. the **REIT manager** deems appropriate to call for a meeting for the benefit of managing the **REIT**;

2. one or many unitholder(s) who hold(s) an aggregate amount of not less than 10% of the total sold **units** request(s) the **REIT manager** to call a unitholder meeting in writing with clear reasonableness for such a calling;

The **REIT manager** has to arrange the extraordinary general meeting under sub clause (b) 2. within 1 month as from the date of receiving the request from the unitholders.

(3) in calling for a unitholder meeting, a calling notice has to specify the venue, date, time, agenda, and matters to be proposed at the meeting together with appropriate details and clearly identifying whether such matter is for acknowledgment, approval or consideration, as the case may be, including the opinion of the **REIT manager** on such matter and any possible impact on the unitholders as a result of passing a resolution on such matter. Such calling notice has to deliver to unitholders not less than 7 days prior to the meeting date. Additionally, the calling of meeting has to be announced on at least 1 local daily newspaper for not less than 3 days prior to the meeting date.

(4) a quorum has to consist of not less than 25 unitholders, or not less than half of the total number of the unitholders who hold an aggregate amount of not less than one third of the total **units** sold;

(5) for amount of vote, one unit has one vote. Furthermore, the unitholders who have the voting right have not to hold a special interest in the matter under consideration;

(6) the passed resolution has to be the following numbers:

(a) for an ordinary issue, the majority vote of the unitholders who attend the meeting and have the right to vote;

(b) for the following issues, not less than three fourths of the total number of votes of the unitholders who attend the meeting and have the right to vote;

1. an acquisition or disposal of the *principal asset* with the value not less than 30% of the total asset value of the *REIT*;

2. raising or reducing of the *paid up capital* which has not already been specified in the trust instrument in advance;

3. *raising capital by general mandate*;

4. execution of a transaction with the *REIT manager* or *related person* of the *REIT manager* at an amount not less than 20 million baht or more than 3% of the net asset value of the *REIT*, whichever is higher;

5. changing in the distribution and the return of investment to the unitholders;

6. change of trustee;

7. amendment to the trust instrument regarding a matter which affects the right of the unitholders materially;

8. dissolution of the *REIT*.

(7) a statement which demonstrates that the resolution of the unitholders which will cause the *REIT* or the *REIT* management contrary to or in contravention of the rules as prescribed in this Notification or other rules under the *Securities and Exchange Act B.E.2535 (1992)* or the *Trust for Transactions in Capital Market Act B.E. 2550 (2007)* has not to take effect.

**Clause 23** In case a *REIT* divides *units* into many classes, the covenants in part of seeking of resolutions and voting of the unitholders shall contain the following additional provisions:

(1) in case of seeking of resolution on a matter which affects the right of the unitholders of all classes, for instance, the dissolution of the *REIT*, such resolution has to receive more than half of the total number of the votes of the unitholders of each class who attend the meeting with the voting right;

(2) in case of seeking of resolution on a matter which affects the right of the unitholders of any particular class, for instance, charging of additional fees and expenses on the *units* of each class, a *REIT manager* shall seek a resolution of the unitholders of such specific class only.

**Clause 24** The covenants in part of restriction of right to receive distribution, management of undistributed interest, and the voting right of the unitholders shall contain at least the following matters:

(1) restricting the right to receive distribution of the unitholders who hold *units* exceeding the specified proportion or not in accordance with the rules as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust*. In this regard, the undistributed interest has to belong to other unitholders according to the proportion of unitholding;

(2) restricting the voting right of the following unitholders:

(a) the unitholders who hold *units* exceeding the specified proportion or not in accordance with the rules as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of Real Estate Investment Trust*. As a result, their voting rights would be restricted only for the proportion exceeding or not in accordance with such rules;

(b) the unitholders who have a special interest in the matter sought a resolution.

**Clause 25** The covenants in part of issues concerning trustee shall contain at least the following matters:

(1) provisions relating to the rights, duties and responsibilities of the trustee which specify the following matters:

(a) the trustee has to perform duties with due care and loyalty for the best interest of the unitholders as a whole and comply with the trust instrument, relevant laws and additional obligations in the documents disclosed to investors (if any). Especially, it has not to be limitation on the liabilities of the trustee in case of failure to perform such duties;

(b) the trustee has to supervise a **REIT manager** or any other assigned person as prescribed in sub clause (g) to perform duties in accordance with the trust instrument and other relevant agreements;

(c) the trustee has to attend the meeting of the unitholders and express an opinion on any matter, which is sought the resolution of the unitholders, whether or not such matter is in accordance with the trust instrument and relevant laws;

(d) the trustee has to enforce or supervise for enforcement of performance to comply with the agreement between a **REIT** and other persons;

(e) the trustee has to manage the **REIT** in lieu of the **REIT manager** in case there is no **REIT manager** or there is a ground which causes the **REIT manager** being unable to perform its duties as stipulated by the *Notification of the Securities and Exchange Commission concerning the Rules for Being the Settlor and the Trustee of a Real Estate Investment Trust*;

(f) the trustee has other rights, duties and responsibilities as prescribed in this Notification and the *Notification of the Securities and Exchange Commission concerning the Rules for Being the Settlor and the Trustee of a Real Estate Investment Trust*;

(g) in case the trustee wishes to [i] manage the **REIT** in the part of investment in other assets aside from the **principal asset** by itself or [ii] assign others apart from the **REIT manager**, it has to be clearly specified such matters. In this regard, such matters shall not have the materiality contrary to or in contrast to the *Notification of the Securities and Exchange Commission concerning the Rules for Being the Settlor and the Trustee of a Real Estate Investment Trust*.

(2) provisions relating to the appointment, conditions and procedures for change, and the remuneration of the trustee.

**Clause 26** The covenants in part of issues concerning **REIT manager** shall contain at least the following additional provisions:

- (1) the appointment and remuneration;
- (2) scope of power and duty as assigned by the trustee in the following matters:
  - (a) the management of the **REIT** regarding business operation which includes investment, borrowing and incurring encumbrance to the assets of the **REIT**, entering into agreement and other operations for the **REIT** within the scope, rules and conditions as specified in the trust instrument;
  - (b) the duty to disclose information on the **REIT** including the information under Section 56 and Section 57 of the *Securities and Exchange Act B.E. 2535* and other information as specified in the trust instrument;
  - (c) in case the **REIT manager** wishes to assign other persons to perform duties under its responsibilities, such matter and the duty of the **REIT manager** to select such assignee with due care and to supervise and examine the assignee's performing have to be specified. In this regard, the provisions relating to the assignment shall not contradict or contrast to 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*.
- (3) the **REIT manager** has to perform duties with due care and loyalty for the best interest of the unitholders as a whole and in accordance with the trust instrument, relevant laws and additional obligations in the documents disclosed to investors (if any). Especially, it has not to be limitation on the liabilities of the **REIT manager** in case of failure to perform such duties;

(4) for change of the **REIT manager**, the covenant shall contain at least particulars and matters as follows:

(a) cause of changing the **REIT manager** has to be at least the following:

1. resignation;
2. removal when it appears that the **REIT manager** fails to manage the **REIT** in accordance with the duties as specified in the trust instrument or this Notification;
3. revocation or suspension of approval of the **REIT manager** by the SEC Office for more than 90 days in accordance with 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*;
4. cessation of status as juristic person.

(b) for appointing a new **REIT manager**, the trustee has to [i] seek a resolution from the meeting of the unitholders within 60 days as from the date when the causes as specified in sub clause (a) occur and [ii] appoint the person who is approved by the unitholders within 30 days as from the date when the unitholders passed the resolution. In this regard, in case the resolution is not granted, the trustee has to appoint a new trustee by taking into account the best interest of the unitholders as a whole;

(c) the former **REIT manager** has to proceed as necessary so that the trustee or the new **REIT manager**, as the case may be, would be able to manage the **REIT** continuously. In this regard, such proceeding has to include affixing signature on documents to certify that the materials passed on to the trustee or the new **REIT manager** are accurate and complete.

(5) in any case, if the **REIT manager** is unable to perform duties, the trustee has to manage the **REIT** as necessary to prevent, desist or limit severe damage to the interest of the **REIT** or the entire unitholders. In this regard, during such time, the trustee may assign other persons to manage the **REIT** instead;

(6) in case the **REIT manager** is able to disburse expenses from the REIT's bank account as stipulated by the trust instrument, the covenant shall contain that the disbursement has to be made from the daily operation account (petty cash) under the limit of amount permitted by the trustee. In addition, it shall contain the duty of



the **REIT manager** to prepare and submit reports on the disbursements to the trustee for verification within a reasonable time.

(7) any provision to support the power and duty of the **REIT manager** in accordance with this Notification 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 Conduct*.

**Clause 27** The covenants in part of fees and expenses shall clearly specify the provisions concerning collection of fees, other remunerations or expenses charged to a **REIT** or the unitholders. In this regard, the expenses which may be charged to the assets of the **REIT** have to be necessary and reasonable and related directly to the management of the **REIT**.

**Clause 28** The covenants in part of amendment to the trust instrument shall contain at least the following matters:

(1) the amendment to the trust instrument has not to contradict or contrast to the objectives of the establishment of the **REIT** and the provisions of the *Securities and Exchange Act B.E. 2535*, the *Trust for Transactions in Capital Market Act B.E. 2550* as well as Notifications, regulations and orders issued by virtue of such laws;

(2) the amendment to the trust instrument in any matter which affects the right of the unitholders has to obtain the approval from the unitholders in accordance with Clause 22(6) except for the amendment by the order of the SEC Office by virtue of Section 21 of the *Trust for Transactions in Capital Market Act B.E. 2550*.

**Clause 29** The covenants in part of dissolution of a **REIT** shall contain at least the matter demonstrating that the trustee will dissolve the **REIT** upon the occurrence of the following circumstances:

(1) when the number of the unitholders is less than 35;

(2) when the **principal asset** is disposed of and a **REIT manager** fails to invest in new **real estate** with an aggregate value of not less than 500 million baht or not

less than 75% of the total asset value of the **REIT** within 1 year as from the date of disposing of such *principal asset*.

**Clause 30** This Notification shall come into force as from 1 January 2013.

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

-Signature-

(Vorapol Socratyanurak)

Secretary-General

Office of the Securities and Exchange Commission

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