



# Chapter 9

REAL ESTATE  
INVESTMENT TRUSTS  
(REITS)

## CHAPTER 9 | REAL ESTATE INVESTMENT TRUSTS (“REITS”)

### (1) Thai REIT History

After the collapse of the Thai property sector in 1996, a contributing factor to the Tom Yum Kung Crisis in 1997, the Thai government attempted to stimulate the Thai economy through the implementation of various strategies. For the real estate sector, the Securities and Exchange Commission of Thailand (the “SEC”) adapting existing mutual fund regulations which resulted in the establishment of the vehicle called Property Fund for Public Offerings (the “PFPOs”). This initiative not only helped the Thai economy, but PFPOs also became popular financial instruments for investors, and thus enhanced the growth of the Thai property market overall.

PFPOs attract investors by enabling them to partially own large real estate projects through the issuance and offering of investment units. Funds raised from investors are used to refinance the existing projects and enable the development of new projects, enhancing growth in a shorter time than through traditional property project development. PFPOs had also been a popular investment vehicle for Thailand’s property developers for some time because of the tax benefits.

Nevertheless, PFPOs also have some disadvantages. The laws and regulations when PFPOs were established focused heavily on investor protection, such as limiting types of assets in which a PFPO could invest in, restricting debt ratios, and specifying the qualifications of fund managers, which made a PFPO a strictly regulated vehicle for real estate investment. PFPOs also do not conform with similar types of investment vehicles used internationally. As such, under an SEC Notification in 2012, Real Estate Investment Trusts (the “REITs”) were established. REITs are a more commonly used vehicle, which involve an immovable property investment system that is easier to use and more transparent.

Though the same overall objectives and concepts for fundraising are shared between REITs and PFPOs, a REIT is a trust that does not include a corporate entity. For REITs, the ownership of property is held by a trustee on behalf of the REIT, and the REIT beneficiaries are trust unitholders.

To encourage the establishment of new REITs and the conversion of PFPOs to REITs, relevant regulators enacted various laws and regulations. In 2014, the SEC prohibited the establishment of new PFPOs and capital increases in PFPOs. Taxes and registration fee incentives for REIT conversions were also issued by the Revenue Department. Such taxes and fee incentives ended in 2017. Since the establishment of such incentives, REITs have become the preferred investment vehicle to PFPOs with 28 REITs in the market as of 1 July 2022.

The main characteristics of a REIT scheme in Thailand are as follows:

- REITs in Thailand are trust-type schemes based on the Trust for Transactions in Capital Market Act, B.E. 2550 (2007). A REIT in Thailand is not a corporation. Accordingly, the trustee of a REIT is formally the asset holder.
- The invested assets consist of: (i) immovable property (freehold rights or possession rights); (ii) shares of companies that hold immovable property; or (iii) benefit in other trusts established under Thai or foreign law. The total value of the invested immovable property must be at least Baht 500,000,000.

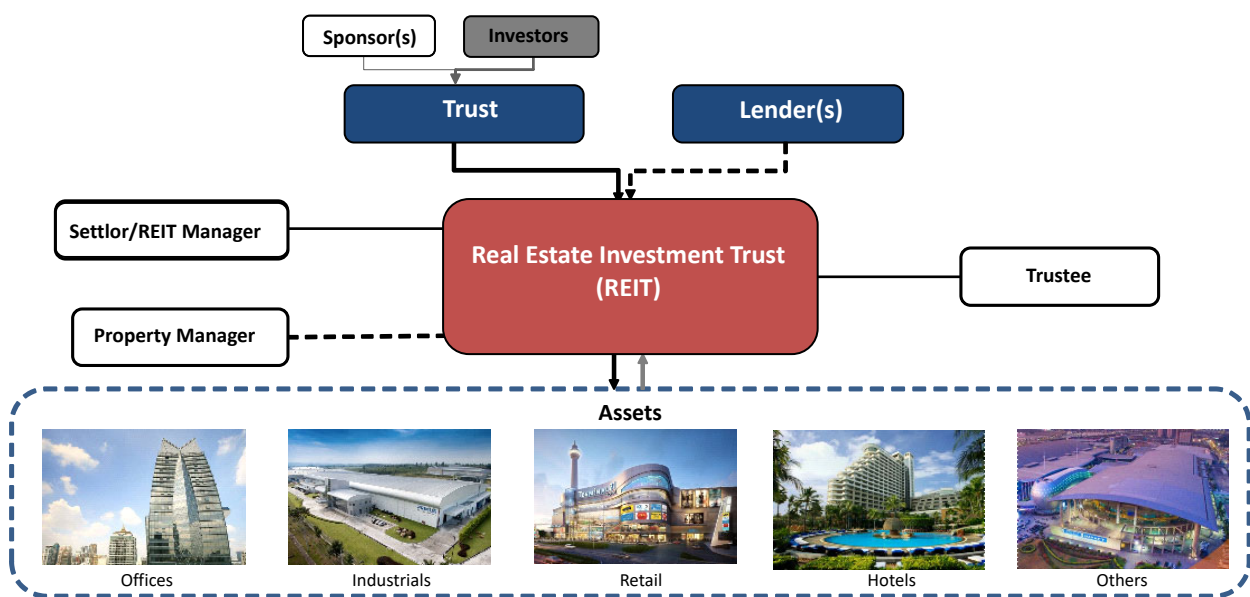
- The trust beneficiary rights units issued for REITs in Thailand must be listed on the Stock Exchange of Thailand (the “SET”). Private placements of REIT units for REIT establishment are not permitted as a general rule. Based on the regulations of the SEC, it is necessary to maintain at least 250 holders of trust beneficiary rights certificates, and the percentage of ownership by a single investor cannot exceed 50% of the total units sold or the total units sold in each tranche. In addition, in accordance with the SET regulations, sales are not permitted unless 15% or more of total holdings are with free float unitholders. There is also a minimum offering amount for trust beneficiary rights certificates, which is at least Baht 500,000,000.

Another advantage of REITs is the ability to borrow money and use its assets as collateral. REITs can borrow up to 35% of their total asset value from financial institutions, or up to 60% if the REIT itself has an investment grade. This makes REITs attractive from investors’ perspectives. REITs can also raise funds by issuing bonds, which can be seen more often in today’s market.

**(2) REIT Overview**

An overview of a REIT scheme in Thailand is shown in Figure 9-1 below. First, the settlor offers the sale of REIT units after obtaining approval for sale from the SEC. Then the settlor enters into a trust deed with the trustee, and a trust is established. After the trust is established, the settlor manages and operates the REIT as the REIT manager. Trust beneficiary rights certificates are issued to investors, and the trustee utilises the proceeds from issuing these certificates (and borrowings) as the funds for investing in immovable property. The trustee distributes the profits gained from the immovable property to investors.

**[Figure 9-1] Overview of the Thai REIT Scheme**



- **Settlor / REIT Manager**  
Once a REIT is established, the settlor will become a REIT manager. A REIT manager’s role is to conduct, manage and operate the REIT. A REIT manager does not have to be an asset management company. It can be a private company being qualified under the SEC’s regulations.

- **Trustee**  
A trustee is a financial institution, securities company, or affiliate of such company with a license to hold assets on behalf of the REIT. The trustee also supervises and monitors the REIT manager to ensure compliance with the law and the trust deed.
- **Sponsor**  
A sponsor is the asset owner injecting asset(s) into a REIT. A sponsor will usually become one of the major trust unitholders.
- **Property Manager**  
The property manager’s role is to manage the assets in day-to-day operations under the scope of work empowered to the property manager by the REIT manager.

**(3) Thai REITs Today**

The Capital Market Supervisory Board has issued a regulatory framework for establishing REITs as a new vehicle for financing real estate investments (the “**REIT Regulations**”). From January 2014, new PFPOs have not been permitted to be set up, so REITs have become a major vehicle in the Thai capital market which enables public investors to invest in real estate projects.

In comparison with PFPOs, REIT regulations provide more operational and investment flexibility and opportunity. One such incentive is that a REIT is allowed to invest in real estate projects in Thailand and overseas through the acquisition of shares of such companies, subject to certain conditions. The investment in overseas assets makes REITs attractive for Thai and foreign owners, and for investors overall, to expand investment opportunities.

**[Table 9-2] Details of the REIT Scheme, Rules, and Certain Regulations in Thailand**

Topic	Details
<b>Establishment</b>	REITs in Thailand are a trust-type scheme based on the Trust for Transactions in Capital Market Act, B.E. 2550 (2007) and relevant notifications issued by the SEC. REITs in Thailand are not corporations. Accordingly, for REIT schemes in Thailand, the trustee of a trust is formally the asset holder.
<b>Name</b>	Must reflect the main characteristics and investment policy of the trust, i.e., freehold, leasehold, or mixed investment. This depends on the investment plan of the REIT itself.
<b>Minimum Size</b>	The paid-up capital after unit offering must not be less than Baht 500,000,000.
<b>Listing</b>	Must be listed on the SET within 45 days from the last offering date.
<b>Tranche</b>	Must be able to launch many types of unit trusts, which provide different rights and benefits (multi-tranche) and must comply with the relevant regulation and trust deed.
<b>Main Investment</b>	<ul style="list-style-type: none"> <li>• All kinds of real estate whereby the main source of income will be in the form of rent.</li> <li>• May invest in real estate domestically or abroad.</li> <li>• Real estate already generating income must be over 75% of the total value of units offered plus loans (if any).</li> <li>• Invests no more than 10% of net asset value (the “NAV”) in green-field projects.</li> </ul>
<b>Types of Investment</b>	Two investment types: <ul style="list-style-type: none"> <li>• Direct investment by acquiring ownership or possession of the assets.</li> </ul>

Topic	Details
	<ul style="list-style-type: none"> <li>• Indirect investment by investing through:               <ol style="list-style-type: none"> <li>1) a company in which the REIT holds:                   <ol style="list-style-type: none"> <li>a) not less than 99% of the total shares and voting rights of the company;</li> <li>b) not less than 75% of the total shares and voting rights of the company, in a case that the asset owner is not a related person to the REIT manager. If there is more than one level of subsidiaries, calculated on a pro-rata basis, the REIT must hold not less than 51% of the total shares of the company; or</li> <li>c) not less than 40% of the total shares and voting rights of such company, in a case that the REIT is unable to hold shares in the company up to the ratio of 99% or 75% of the total shares and voting rights of the company because of restrictions under relevant laws (i.e., foreign restrictions on holding titles of plots of land); or</li> </ol> </li> <li>2) other trusts established under Thai law or foreign law.</li> </ol> </li> </ul>
<b>Investment Policy</b>	<ul style="list-style-type: none"> <li>• Leasing real estate without operating other businesses, such as hotels and hospitals. However, REITs may temporarily operate other businesses by themselves, such as hotels or hospitals, under the condition that there is a change of lessee or the process of seeking a new lessee is ongoing and the operation must comply with other relevant requirements.</li> <li>• Lessees must not use real estate to operate immoral or illegal businesses.</li> <li>• In the case of leasing real estate for the operation of other businesses, the agreed fixed rent and the portion of rent dependent on the operating results of the lessee (Variable Rent) must be disclosed in the registration statement, prospectus, annual registration statement (Form 56-1) and annual report.</li> </ul>
<b>Leverage Limit</b>	<ul style="list-style-type: none"> <li>• Not more than 35% of the total assets; in the case that the REIT obtains an investment grade, not more than 60% of the total assets.</li> <li>• In accordance with the trust deed.</li> <li>• May collateralize REIT assets.</li> <li>• Other commitments or agreements will be customary commercial transactions or ordinary course of business transactions.</li> </ul>
<b>Distribution and Allocation of REIT Units</b>	<ul style="list-style-type: none"> <li>• Must distribute trust units through an underwriter.</li> <li>• Based on the regulations of the SEC, it is necessary to maintain at least 250 holders of trust beneficiary rights certificates, and the percentage of ownership by a single investor cannot exceed 50%. In addition, in accordance with the SET regulations, sales are not permitted unless 15% or more of total holdings are with free float unitholders.</li> <li>• Trust units must be distributed to individual unitholders in accordance with the listing criteria of the trust (not less than 20% of all trust units - in the case of tranches, 20% applies to each tranche).</li> </ul>
<b>Unit Holding Restriction for Any Person or Group of Persons</b>	<p>Must not exceed 50% of the total number of trust units (in the case of tranches, 50% applies to each tranche).</p>
<b>Unit Holding Restriction for Foreign Investors</b>	<p>In the case where the REIT invests in real estate in Thailand, the unitholding of foreign investors must be in accordance with laws or regulations relating to such real estate.</p> <p><b>Land Code:</b> A juristic person, whose shares constitute its registered capital</p>

Topic	Details
	and are held by foreigners by more than 49% of its registered capital, or whose foreign shareholders are more than one-half of the total number of its shareholders, are considered as alien and will be prohibited to hold land in Thailand.
<b>Buy-back conditions</b>	<p>Two types of REIT with buy-back conditions:</p> <ul style="list-style-type: none"> <li>• <b>REITs with a Buy-Back Obligation:</b> A property owner has an obligation to buy assets back from the REITs with specific conditions as specified in the asset sale and purchase agreement. The trust units can be offered to (1) all types of investors (where the trust units must be listed on the SET), or (2) only Institutional Investors or High Net Worth Investors (where the REIT must have at least two trust unitholders and the trust units must not be listed on the SET).</li> <li>• <b>REITs with a Buy-Back Option:</b> A property owner has an option to buy assets back from REITs with the same specific conditions as specified in the asset sale and purchase agreement. The trust units can be offered to only Institutional Investors or High Net Worth Investors (where the REIT must have at least two trust unitholders and the trust units must not be listed on the SET).</li> </ul> <p>In the case trust units were offered to only Institutional Investors or High Net Worth Investors, such trust units in the REIT can be transferred to only Institutional Investors or High Net Worth Investors, except for a case of inheritance.</p>

**(4) Private REITs**

The SEC has introduced an alternative REIT investment choice, a Real Estate Investment Trust for Private Investors (“**Private REIT**”). Private REITs are subject to less filing and regulatory requirements as they are limited to sophisticated investors (i.e., (i) institutional investors and (ii) REIT managers and their associated persons) who are classified to have sufficient experience in capital markets.

**[Table 9-3] Brief Comparative Summary Between a Public REIT and a Private REIT**

Topic	Public REIT	Private REIT
<b>Nature of Investment</b>	<p>At least 75% of the value of the offered trust units including the amount of secured loans (if any) must be invested in the following main assets:</p> <ol style="list-style-type: none"> <li>1. Real estate to acquire ownership or leasehold rights.</li> <li>2. Real estate to acquire ownership or leasehold rights via the holding of shares in a company or holding of trust units in other trusts.</li> </ol> <p>The remaining portion not exceeding 25% can be invested in other assets as specified in the Announcement of the Securities and Exchange Commission No. SorRor. 26/2555 re: Provisions relating to Particulars, Terms and Conditions in a Trust Instrument of</p>	<p>At least 75% of the value of the offered trust units including the amount of secured loans (if any) must be invested in the following main assets:</p> <ol style="list-style-type: none"> <li>1. Real estate to acquire ownership or leasehold rights.</li> <li>2. Real estate to acquire ownership or leasehold rights via the holding of shares in a company or holding of trust units in other trust.</li> </ol> <p>The remaining value of the offered trust units not exceeding 25% can be invested in financial instruments or any other financial transaction.</p>

Topic	Public REIT	Private REIT
	Real Estate Investment Trust (as amended).	
<b>Trust Unitholders</b>	General investors	1. Institutional Investors; and 2. REIT Managers or Associated Persons of the REIT Manager (“ <b>Private REIT’s Investors</b> ”).
<b>Number of Unitholders</b>	No less than 250 investors	No less than two investors
<b>Trust Unit Transfer Restriction</b>	N/A	Trust units cannot be transferred to general investors who are not the Private REIT’s Investors, except in the case of inheritance.
<b>Preparation of Registration Statement and Prospectus</b>	Prepare and file to the SEC.  Effective after 45 business days from the date on which the SEC receives the Registration Statement, unless otherwise announced by the Capital Market Supervisory Board.	Prepare and file to the SEC.  Effective after one business day from the date on which the SEC receives the Registration Statement.
<b>Application for Permission to Offer Trust Units for Sale</b>	Must be approved by the SEC.	The offering for sale of trust units is deemed to be approved by the SEC in general.
<b>Listing of Securities</b>	Required	Not required
<b>Minimum Value</b>	Paid-up capital after the offer for sale must not be less than Baht 500,000,000.	No requirements
<b>Securing of Loans</b>	Not exceeding 35%, or 60% of the total assets in the case of the REIT’s credit rating is within the investment grade	No requirements

### (5) REIT Related Party Transactions and Conflicts of Interest

Like listed companies, the regulators also recognize that related party transactions or transactions with a conflict of interest might be implemented for the best interest of REITs and ultimately the trust unitholders and will allow such transaction to be executed subject to certain criteria and procedures to protect the REITs and the trust unitholders from exploitation by a related party to the REIT manager and the trustee.

In the market, REITs’ assets are injected by sponsors who are the parent company of the REIT managers. Sponsors are also usually appointed to be the property managers of the REITs due to their experience and expertise in the assets.

#### A. Related Party Transactions

To enter into a related party transaction, the approval procedures required are as follows:

- (i) The trustee approves that the transaction is in compliance with the trust deed and relevant laws;

- (ii) In a case that the value of the transaction: (i) exceeds Baht 1,000,000; or (ii) is 0.03% of NAV of the REIT or more, whichever value is higher, the approval of the board of directors of the REIT manager is required; and
- (iii) In a case that the value of the transaction: (i) is Baht 20,000,000 or more; or (ii) exceeds 3% of NAV of the REIT, whichever value is higher, the resolution of approval of the trust unitholders’ meeting passed by not less than 3/4 of the total number of votes of the trust unitholders who attend the meeting and are entitled to vote is required.

In the case the transaction is an acquisition or a disposition of the principal asset, the calculation of the value must be based on both the value of the acquisition or disposition of the total assets of each project, which are ready to generate income, and the value of other assets relating to such project.

In addition, the REIT manager must give an opinion on the characteristics of the transactions together with the rationale and clear supplementary information, while the trustee has the duty to give an opinion on the characteristics of the transactions regarding compliance with the trust deed and relevant laws. Nevertheless, the approval procedures as aforementioned in (2) and (3) can be exempted if the transaction has been clearly disclosed in the registration statement and the prospectus.

## **B. Conflicts of Interest**

The trustees usually are subsidiaries of commercial banks. In the case where the REITs use financing from the bank to invest in assets, the bank, being a parent company of the trustee, is usually the lender to the REITs.

Trustees are not regulated by the same provision as the REIT manager. Transactions between the REIT and the trustee or its related party are regulated by a more extensive provision of conflict of interests. There is no specific definition of a conflict of interest or a related party of the trustee. In general, the trustee (including its related party) is prohibited to act in conflict of interest with the REIT regardless of whether such act is done for the benefit of its own or other persons. Exemptions are: (i) where it is the trustee’s claim for its remuneration; or (ii) where the trustee can show that the REIT is managed with fairness under which all related information has been sufficiently disclosed to beneficiaries who thereafter hold no objection to the act. The disclosure can be done by publication on the SET for a reasonable period of not less than 14 days, except in the case where such transaction is approved by a trust unitholders’ meeting resolution, and any objection is to be proceeded at the time that the trust unitholder’s meeting resolution is rendered. If the trust unitholders object to the transaction in an amount of more than one quarter of the total trust units sold, the trustee may not conduct or allow the execution of the transaction which raises the conflict of interest with the REIT.

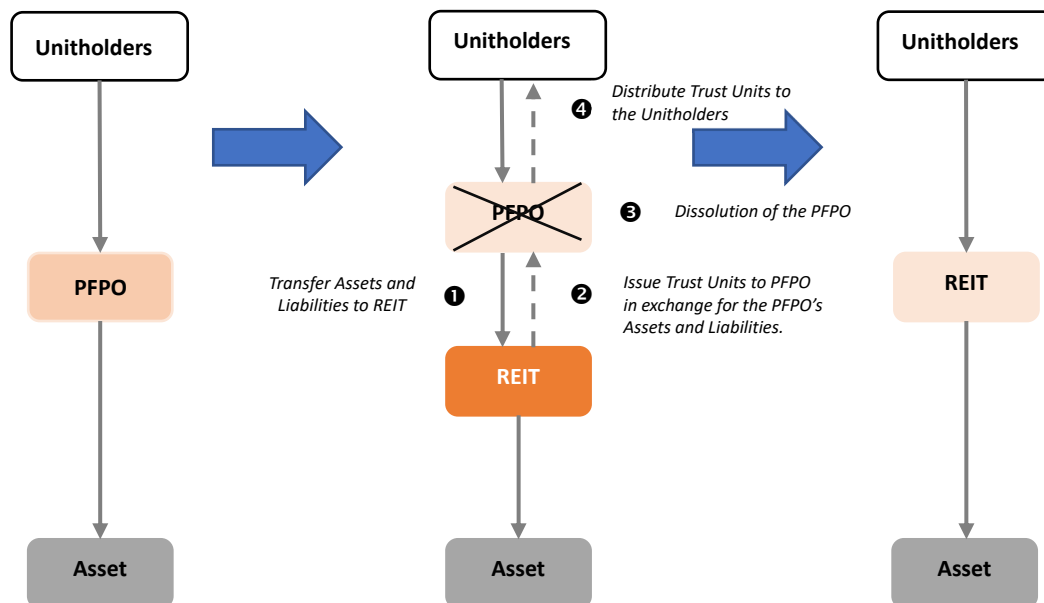
## **(6) PFPO to REIT Conversions and Benefits**

After the new set of regulations regarding REITs were issued in 2012 in substitution of those previously issued for PFPOs, existing PFPOs have been encouraged by the regulators to convert into REITs. As mentioned, since 2014, PFPOs may neither be established, nor increase their capital for additional investment. The regulators have encouraged existing players to shift from the PFPO scheme to the REIT scheme by way of conversion. To convert a PFPO to a REIT, a PFPO will transfer all its existing rights and liabilities to a REIT. In consideration of the transfer of the PFPO’s assets and liabilities, the REIT will issue trust units to the PFPO. After receiving trust units from the REIT, the PFPO will distribute all the



exchanged trust units to existing unitholders turning such unitholders of the PFPO into trust unitholders of the REIT.

[Figure 9-4] Conversion of PFPOs to REITs



The SEC issued the first regulation for the conversion of PFPOs to REITs in 2013. Unfortunately, the conversion was not, at that time, attractive to existing players due to the considerable cost of conversion and the absence of some tax benefits under the REIT scheme. The conversion of PFPOs to REITs were actively supported by the SEC during 2016 and 2017. With the involvement of corporations with relevant regulators, certain benefits were created to attract existing PFPOs to consider conversion, such as exemption of taxes and fees for the transfer of assets from a PFPO to a REIT, or tax benefits from the increased value of the exchange of the investment units into trust units (if any) at the unitholders' level. Even though the aforementioned benefits expired on 31 December 2017, there are other benefits from the conversion of PFPOs to REITs as follows:

- Enables further investment in additional assets and opportunity for growth**

After 2014, all existing PFPOs were not allowed to raise capital to invest in additional assets, which made additional investment by existing PFPOs virtually impossible. Currently, the only available financial source for PFPOs for investment in additional assets is their respective and remaining working capital. The conversion will enable the existing PFPOs to make further investments in additional assets and provide an opportunity for growth. REITs, however, can raise additional capital and/or get financing from banks to facilitate additional investments.
- Diversify sources of income from additional assets**

With the ability to raise capital, REITs can utilize capital to diversify their portfolio by investing in several assets or by having various tenants from different sectors. This assists the REIT by not being reliant upon a single investment.
- Gearing benefits**

Regulations restrict PFPOs to leveraging 10% of NAV. After the conversion to a REIT, the leverage limit increases to 35% of the total assets and up to 60% of the total assets in the case that the REIT

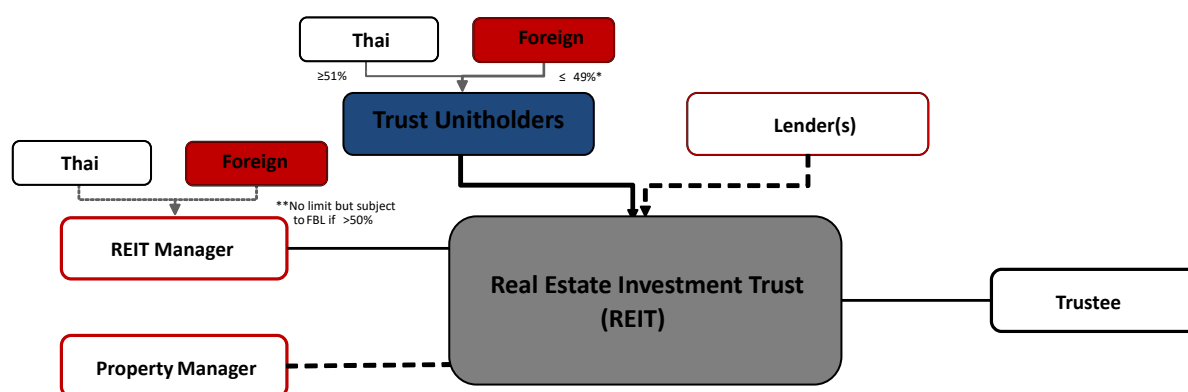
obtains an investment grade.

- REIT structure is universal**  
 Unlike PFPOs, REITs are widely used internationally. Thus, REITs can be attractive to foreign investors.
- Conversion Timeline**  
 Generally, the whole process of conversion, starting from the engagement of advisor until the listing of new trust units, will take approximately eight months.

**(7) Foreigners’ Involvement in REIT Transactions in Thailand**

As previously explained, there are several parties involved in a REIT transaction such as a sponsor, a REIT manager, trustees, trust unitholders and advisors; foreigners can also participate in a REIT scheme in Thailand as shown in Figure 9-5 below.

**[Figure 9-5] Foreigners' Involvement in REIT Transactions**



Thai REITs investing in freehold rights over real estate in Thailand have foreign trust unitholding restriction capped at 49% as per the Land Code. This foreign unitholding restriction does not apply to Thai REITs investing in leasehold rights over real estate in Thailand. However, if such a REIT invests in mixed freehold and leasehold rights over real estate in Thailand, the REIT must apply the foreign trust unitholding restriction of 49%, like a REIT investing purely in freehold rights.

A REIT manager can be a foreign-owned company established in Thailand. However, such REIT management service is classified as an “other service business” which prevents a foreign company from engaging in the same without a foreign business operation license under the Foreign Business Operations Act, B.E. 2542 (1999), List 3(21). Therefore, the foreign owned REIT manager must apply for a foreign business operation license.

Moreover, unlike PFPOs, REITs are allowed to invest in real property both in Thailand and overseas. In the case of an investment in real property situated in a foreign country, involving foreign/Thai owners, the REIT manager must conduct due diligence in respect of the acquisition and possession of such real property pursuant to the laws of the jurisdiction where the real property is situated. A legal opinion from a legal advisor specialized in such laws of the jurisdiction involved must also be procured in accordance with REIT Regulations.

As for the management of the real property situated in a foreign country, the REIT manager may

appoint a property manager to perform day-to-day operations as delegated by the REIT manager, which can be specified in the Trust Deed and the REIT manager appointment agreement. Although investments in the foreign country is allowed, it is important to note that such investment may be limited and/or restricted by relevant applicable laws of certain jurisdictions, such as foreign business laws, property laws, etc. In the case where a REIT indirectly invests through holding shares in a special purpose vehicle (the “**SPV**”), the property manager is appointed by such SPV.

At this stage, there is no specific rule issued by the relevant authority in connection with the investment of the real property situated in a foreign country. However, with respect to this investment flexibility, we may begin to see the continuing growth of REITs representing a significant step in the development of Thailand’s capital market.

Today, the REIT business in Thailand is projected to grow, and REITs are considered viable investment diversification and vehicles for investors and property entrepreneurs.

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