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Thailand's new infrastructure funding tool

This quasi-equity instrument, created through a listed fund, will underpin the government's efforts to boost infrastructure investment

Ashley Lee, staff writer

BTS Mass Transit Growth Infrastructure Fund's (BTSGIF) initial public offering (IPO) was the first of its kind for the Stock Exchange of Thailand (SET), and is expected to spur infrastructure investment in the country.

Raising THB62.51 billion (\$2.1 billion), BTSGIF's was the largest public offering ever by a Thai company, and the largest IPO in Asia so far this year. More importantly, it introduced a new product to the Thai market.

This deal is widely expected to be the first of many, as the Thai government looks to bolster the country's infrastructure. It has recently announced a THB4.2 trillion, seven-year plan for the sector that includes financing via public-private partnerships (PPP) and bonds.

The structure allows the public to have ownership over infrastructure assets or projects

Weerawong C&P's Peangpanor Boonklum says that instead of following a trend, this deal will lead to a trend. "The product is a quasi-equity instrument that generates yield for investors – similar to a bond – but includes positive upside as well," she explains. "That's why it was popular with investors: you can see that from the overwhelming subscription."

The deal

BTS Mass Transit System Public Company (BTSC) is the sole operator of the BTS SkyTrain, an electric elevated railway running above Central Bangkok's roads. BTSGIF will purchase the future farebox

revenue from 23.5 kilometres of the SkyTrain main line, and may invest in other infrastructure businesses.

BTSC retained 33.3% of the shares in the fund, but 66.67% of the \$2.1 billion offering went to cornerstones and other investors. BBL Asset Management will manage the fund, and BTSGIF must pay 90% or more of its adjusted net profit each year as dividend distributions to unit holders.

The product

The infrastructure fund provides project sponsors with an alternative form of financing while also allowing the public to take ownership of projects. Although the country's PPP Act was recently approved by Parliament, market participants expect the infrastructure fund to play the biggest role in financing projects in Thailand.

In a February 2012 speech, Thailand's Securities and Exchange Commission (SEC) secretary-general Dr Vorapol Socratayaurak described the infrastructure fund as a tool that allows the private sector or state enterprises to mobilise funds to develop infrastructure projects, while easing the government's budgeting burdens and public debt.

Linklaters' Wilailuk Okanurak says the fund can invest in infrastructure in a variety of ways. For example, the funds can invest directly in the assets themselves, by purchasing the asset, or by transferring the asset into the fund.

Infrastructure funds may prompt more large listings in Thailand. While this product's establishment follows the trend of property fund IPOs, Boonklum predicts that these deals are likely to be larger because they deal with infrastructure, which is inherently capital-intensive.

Net revenue purchase and transfer agreement

What?

Counsel agree that the most complex aspect of the deal was the net revenue purchase and transfer agreement related to BTSGIF's purchase of SkyTrain's future farebox revenue.



Clifford

Chance partner Crawford Brickley says that although this agreement is not totally unprecedented, as there have been similar structures in the region, it is certainly not common. It's the first time that he's seen the structure in Thailand.

Thomas Kollar, counsel at Clifford Chance, adds that the agreement between the SkyTrain operator and the fund to purchase the rest of the concession was structured such that the agreement would transfer the net revenue of the concession that would properly sit in the infrastructure fund's structure.

Lim Sin Teck of Stamford Law says this aspect of the deal was especially complicated. It was impossible for the fund to have an assignment of the concession agreement, he says, so counsel had to figure out how to effect the commercial intent of the deal – to transfer BTS SkyTrain's economic interests derived from the concession agreement – without actually assigning or transferring the rights to the concession agreement.

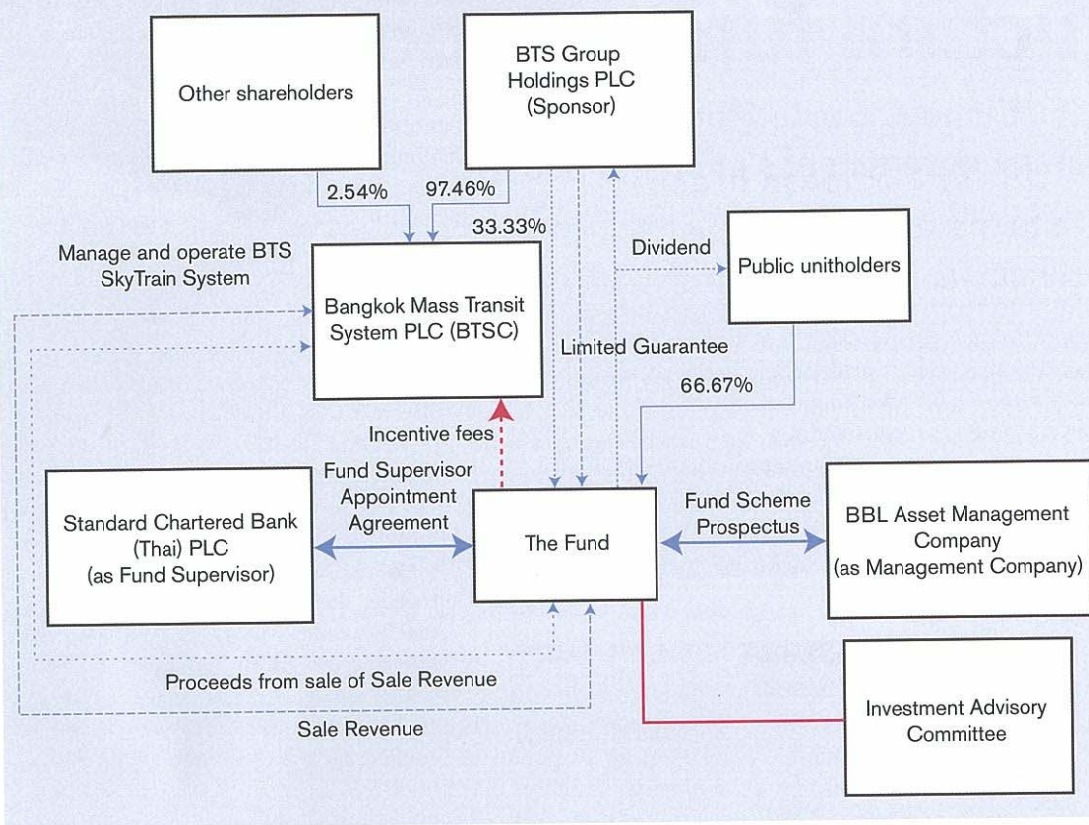
Further, by its very nature, this is a product driven by its legal aspects, Boonklum says. The SEC required that there be legal counsel, which based on the nature of the transaction should be counsel to the sponsor, to issue an opinion to confirm that it was not in breach of its concession. "Law firms are not licensed under the SEC or under its supervision, so this is the first time that we've seen an SEC regulation require a legal opinion," she adds.

Another challenge was setting out the procedure for BTS to deliver its net farebox revenue to the fund. This included how the net revenue would be delivered by BTS to the fund on a daily basis and setting out the mechanism and account structure, says Okanurak. There are also requirements regarding BTS' delivery of various reports, such as a daily report of the net farebox revenue that the fund expects to receive, she added.

Why?

Initially BTSGIF will be primarily dependent on a single source of income, so the agreements are essential to its success.

BTSGIF's fund structure



may also look to infrastructure funds in the future, Okanurak says. "Aside from fundraising from the public, the structure allows the public to have ownership over infrastructure assets or projects," she adds.

It may not be an appropriate model for traditional projects developed under the PPP scheme, it can be used for fundraising once projects can show they have performed at a satisfactory level. Infrastructure funds could be an option in the future instead of an IPO of the project when it is complete, she adds. But deal structures will differ based on the government concessions involved, given their political

One risk factor noted in the prospectus is that BTSGIF's cash flow will rely on BTSC's due and punctual performance of its obligations under the Net Revenue Purchase and Transfer Agreement

Counsel needed to consider requirements and restrictions on BTS as seller of this future revenue, says Okanurak, and had to work around certain limitations to mitigate the risk of not being able to obtain third party consents. "By structuring the transaction as a fund purchasing future revenue, it minimised certain requirements to obtain consent or approvals to implement the transaction," she says.

Lim notes that for future infrastructure projects, depending on its particular situation, it may be better to transfer the relevant asset or assign the underlying agreement to the fund rather than structure it as a sale of revenue. However this structure was necessary in the BTSGIF IPO because it was not possible to transfer the concession rights for various reasons.

Cornerstone investors

What?

Cornerstone investors have become a feature of IPOs throughout Asia, particularly in Hong Kong and Singapore, because their presence gives retail investors confidence in the offering. While they

have been seen in Thailand, most notably in the December 2012 IPO of Tesco Lotus' property fund, this is the first transaction to see a large participation by cornerstones. Altogether, cornerstone investors including Capital Research and Management Company, AIA Group and Schroder Investment Management took up 40.3% of the public offering.

Why?

Okanurak says that the cornerstone investors were very important to the deal's success. This is the first deal in Thailand on which she's seen a number of them, and in which they comprised both domestic and international investors. "They are sophisticated investors used to seeing complex deals, and gave confidence to retail investors looking at the deal," she adds.

What's next for Thai infrastructure

Thailand has recently been improving products related to infrastructure financing. Aside from BTSGIF's listing, Parliament's recently-passed new PPP Law, is expected to encourage more private investment into infrastructure.

But infrastructure funds are expected to be especially useful for project sponsors. Companies that own infrastructure assets

sensitivities.

For mass transit, toll roads or airport concessions, where the project is granted under a government concession and no assignment is possible, Lim says the net revenue purchase agreement structure may be used again. But for private endeavours, when the project starts generating revenue, sponsors can transfer shares in the project company or the asset itself to the fund.

Boonklum notes that the SkyTrain concession was quite flexible, which gave counsel greater scope to structure the deal. She agrees that deals involving government concessions may prove challenging. "In some industries, government concessions may be more stringent," she says. "They tend to be customised so we will look at these IPOs deal by deal, or concession by concession."

Weerawong C&P advised BTS Group Holdings as Thai counsel to the IPO sponsor. White & Case was international counsel. Lim Sin Teck was part of the transaction team at White & Case but has since become a director at Stamford Law. Linklaters represented underwriters Morgan Stanley, UBS and Phatra Securities. Clifford Chance acted for BBL Asset Management.

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