

# CHANDLER MHM

## Newsletter

### SEC PUBLISHES ANNOUNCEMENTS ON RELAXING CERTAIN OBLIGATIONS OF REITS DUE TO THE IMPACT OF COVID-19

The COVID-19 pandemic has affected the operations of several Real Estate Investment Trusts (“REITs”). In March 2020, the Securities and Exchange Commission (the “SEC”) issued an announcement to allow REITs to postpone their Annual General Meetings (“AGMs”) or allow alternative arrangements for AGMs. Additional options for AGMs have been considered.

The SEC has since issued two additional announcements that include relaxation of certain obligations of REITs, as Thailand continues to combat the global effects of COVID 19. These announcements have been effective since 1 August 2020, and are as follows:

- i. The Announcement of the Office of the Securities and Exchange Commission No. SorRor. 40/2563 re: Relaxation of the requirements in the Trust Deed of Real Estate Investment Trust due to the outbreak of the COVID-19 (the “**SorRor. 40/2563**”); and
- ii. The Announcement of the Capital Market Supervisory Board No. ThorNor/Jor. 36/2563 re: Relaxation of operation of Property Funds, Infrastructure Funds and Real Estate Investment Trusts due to the outbreak of the COVID-19 (the “**ThorNor/Jor. 36/2563**”).

(SorRor. 40/2563 collectively with ThorNor/Jor. 36/2563, are referred to as the “**Announcements**”).

The changes made by these announcements are important for REIT unitholders, REIT managers, and those considering investing in the capital markets in Thailand. This article provides a brief outline of the key provisions in the Announcements.

#### **Relaxation of unitholders’ meeting protocols under the Announcements**

In respect to unitholders’ meetings that are convened in 2020, the Announcements permit circular resolutions instead of holding a meeting of trust unitholders. An exception applies for agenda items that include a disposition of assets. Circular letters must be sent to unitholders at least 14 days prior to the last date specified to receive votes from unitholders. If an agenda item requires a vote of not less than three-fourths (3/4) of the total number of votes of the unitholders entitled to vote and present at a meeting, the circular resolution must be approved by a majority vote of all unitholders entitled to vote. In other cases, a circular resolution will be passed by a majority vote of all unitholders responding to a circular letter and entitled to vote.

#### **Relaxations on operations of REITs under the Announcements**

In addition to providing an alternative to convening a unitholders’ meeting for a REIT, the Announcements also provide certain relaxations in relation to the operations and obligations of REITs. The key highlights of these relaxations are as follows:

- The requirement to evaluate an asset within 2020 can be waived if the appraiser cannot conduct the valuation due to the impact of the COVID-19. The REIT Managers must submit a letter requesting a waiver specifying the reasons and necessity for such waiver to the SEC, and disclose such information on the Stock Exchange of Thailand’s website;
- REITs affected by the outbreak of COVID-19 are allowed to make additional adjustments to net profits for the distribution of dividends with the difference of the accrued rent income between previous fiscal year and current fiscal year, for distribution of dividends for the fiscal year ending no later than 31 December 2020;

#### Key Contacts



Tananan Thammakiat  
TEL + 66-2-009-5000 Ext. 3202  
[tananan.t@mhm-global.com](mailto:tananan.t@mhm-global.com)



Namita Tangpitukpaibul  
TEL + 66-2-009-5000 Ext. 3204  
[namita.t@mhm-global.com](mailto:namita.t@mhm-global.com)



Suchunsinee Ngamchitsuksri  
TEL + 66-2-009-5000 Ext. 3204  
[suchunsinee.n@mhm-global.com](mailto:suchunsinee.n@mhm-global.com)

#### CHANDLER MHM

Chandler MHM Limited  
36th Floor, Sathorn Square  
Office Tower  
98 North Sathorn Road  
Silom, Bangrak, Bangkok 10500  
Thailand  
[www.chandlermhm.com](http://www.chandlermhm.com)

- if the REITs are unable to maintain proportional rental fees that refer to profits (variable rental fees) or fixed rental fees for the year 2020 due to the impact of COVID-19 on the performance of the assets, such requirement will be waived; and
- REITs may consider procuring additional short-term loans to enhance the REIT's liquidity. Such loans must have the first drawdown in 2020 and the loan repayment date must be no more than one year from the execution date of the loan agreement. In addition, the loan amount must not exceed the amount of expenses or obligations as specified in the latest financial statements or other obligations disclosed to unitholders prior to the execution date of the loan agreement.

### **Offering period extensions under the Announcements**

Apart from the relaxation of the unitholders' meeting protocols and operations, the Announcements allow for an extension to the offering periods for REITs. Due to severe fluctuations in the capital markets stemming from the impact of COVID-19, some REITs have announced that the offering period for new trust units in Q1 of 2020 would be postponed. SEC regulations had required that the offer and sale of new trust units must be completed within six months from the date of approval by the SEC.

The Announcements allow REIT Managers and underwriters who cannot issue and offer new trust units within six months from the date of approval by the SEC to request the SEC, at least 30 days in advance, to extend the offering period. If an extension is approved, that extension cannot be more than 12 months from the date of initial approval.

If you would like to discuss the issues raised in this article further or related issues, please contact the authors listed in the right-hand column.

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This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact [bd@mhm-global.com](mailto:bd@mhm-global.com).