

Newsletter

THAILAND: A NEW INVESTMENT CHOICE - PRIVATE REIT

Introduction

A Real Estate Investment Trust ("REIT" or "Public REIT") could currently be one of the most attractive investment options for investors. This is because REITs have a straightforward operation model (i.e. mostly operate by leasing property and collecting rents) which is easy for investors to understand. This briefing provides an overview of Private REITs which are being introduced as an alternative investment choice and which may have some advantages compared to Public REITs.

The Thai capital market's regulatory systems are currently designed to be merit-based. In this regard, the Thai Securities and Exchange Commission (the "SEC"), as a securities' regulator, tends to control all matters related to the Thai capital markets as well as the Public REITs. The SEC attempts to take necessary measures to preserve the confidence of investors and to ensure appropriate security for non-sophisticated investors in the Thai capital markets. As a result, unfortunately, the process involved for the establishment of a new Public REIT, a capital increase of an existing Public REIT as well as on-going operation compliance, can be relatively time consuming and complicated.

Recently, the SEC has introduced an alternative REIT investment choice, a 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.

The following SEC announcements in relation to a Private REIT are effective from 16 June 2021:

1. Announcement of the Capital Market Supervisory Board No. TorJor. 43/2564 re: Issuance and Offers for Sale of Units of REITs (No. 21) ("TorJor. 43/2564");
2. Announcement of the Capital Market Supervisory Board No. TorJor. 44/2564 Re: Rules, Conditions and Procedures for Disclosure of Mutual Funds and Real Estate Investment Trusts or Infrastructure Trusts (no. 10) ("TorJor. 44/2564");
3. Announcement of the Securities and Exchange Commission No. SorRor. 32/2564 re: Provisions relating to Particulars, Terms and Conditions in a Trust Instrument of Real Estate Investment Trust (no. 15) ("SorRor. 32/2564"); and
4. Announcement of the Securities and Exchange Commission No. SorRor. 33/2564 Re: Provisions relating to Particulars, Terms and Conditions in a Trust Instrument of Real Estate Investment Trust for Private Investors ("SorRor. 33/2564").

(Collectively, the "Announcements")

The table below provides a brief comparative summary between a Public REIT and a Private REIT.

	Public REIT	Private REIT
Nature of Investment	At least 75% of the value of the offered trust units including the amount of secured loan (if any) must be invested in the following main assets:	At least 75% of the value of the offered trust units including the amount of secured loan (if any) must be invested in the following main assets: 1. Real estate to acquire ownership or leasehold rights.

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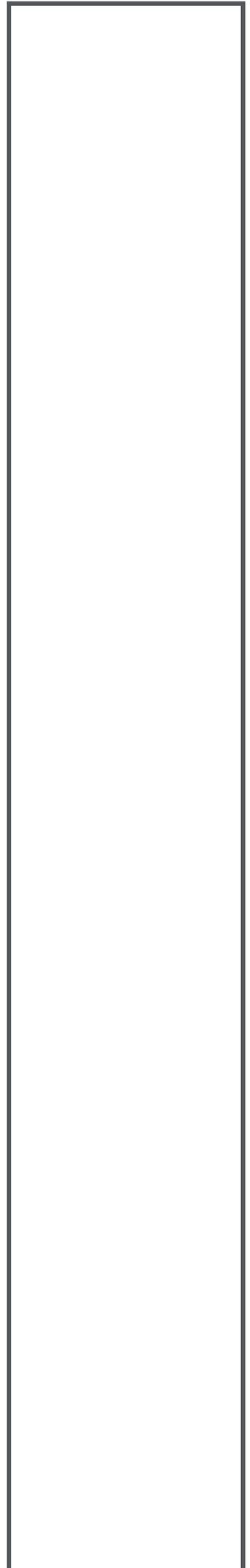


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	<ol style="list-style-type: none"> 1. Real estate to acquire ownership or leasehold rights. 2. Real estate to acquire ownership or leasehold rights via the holding of shares in a company, or holding of trust units in other trusts. <p>The remaining part of 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 Real Estate Investment Trust (as amended) (“SorRor. 26/2555”)</p>	<ol style="list-style-type: none"> 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. <p>The remaining value of the offered trust units not exceeding 25% can be invested in financial instruments or any other financial transaction.</p>
Settlor	Person to be REIT Manager	
REIT Manager	Person approved by the SEC	
Trustee	Person approved by the SEC	
Trust Unitholders	General investors	<ol style="list-style-type: none"> 1. Institutional Investors 2. REIT Manager or Associated Person of the REIT Manager <p>(“Private REIT’s Investors”)</p>
Number of Unitholders	No less than 250 investors	No less than 2 investors
Trust Unit Transfer Restriction	N/A	Trust units cannot be transferred to general investors who are not the Private REIT’s Investors, except in the case of inheritance.
Foreign Investment Percentage	Must be in compliance with the relevant law	
Trust Deed	<p>Must contain at least the information as required under SorRor. 26/2555 as follows:</p> <ol style="list-style-type: none"> (1) establishment of the REIT; (2) issues concerning units; (3) capital raising 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 by the REIT; (8) taking advantage of trust property; (9) borrowing money and encumbrances of the asset of the REIT; (10) property valuation; (10/1) inspection of real estate (11) the transactions between the REIT and the REIT Manager or related persons of the REIT Manager; 	<p>Must contain at least the information as required under the Announcement of the Securities and Exchange Commission No. SorKhor. 4/2553 Re: Particulars in Trust Instrument as follows:</p> <ol style="list-style-type: none"> (1) establishment date of the Private REIT; (2) name, address and telephone number of the settlor and the Trustee; (3) name or qualifications of a beneficiary or any description that identifies a beneficiary; (4) name, term, type and objective of the Private REIT provided that such name shall describe the characteristics of the Private REIT (5) significant features of the trust certificate including the rights, conditions and returns of the trust certificate; (6) trust property (7) any other rights of a beneficiary (8) duties of the Trustee (9) rate and method of payment of fees or any other expenses relating to the Private REIT (10) amendment of the trust deed



	<p>(11/1) transactions being in conflict of interest between the REIT and the Trustee;</p> <p>(12) disclosure of information of the REIT;</p> <p>(13) payment of distribution to unitholders;</p> <p>(14) seeking of resolutions and meeting of unitholders;</p> <p>(15) restrictions on the right to receive a distribution, management of undistributed income and the voting rights of unitholders;</p> <p>(16) issues concerning the Trustee;</p> <p>(17) issues concerning the REIT Manager;</p> <p>(18) fees and expenses;</p> <p>(19) amendment to the trust deed; and</p> <p>(20) dissolution of the REIT.</p>	<p>(11) meeting of trust certificate holders (if any)</p> <p>(12) transfer of trust certificates (if any)</p> <p>(13) appointment, change and removal of the Trustee</p> <p>(14) delegation of trust management (if any);</p> <p>(15) advanced payment made by the Trustee for the Private REIT (if any);</p> <p>(16) preparation for financial statements of the Private REIT and an auditor;</p> <p>(17) termination of the Private REIT and liquidation; and</p> <p>(18) specimen of a trust certificate attached to a trust deed (if any)</p> <p>And the. SorRor. 33/2564 having two additional terms as follows:</p> <p>(1) Appraisal of the asset; and</p> <p>(2) Restrictions on the rights to receive dividends and benefits and the right to vote for those trust unitholders who hold the trust units exceeding the holding limit.</p>
Preparation of Registration Statement and Prospectus	<p>Prepare and file to the SEC</p> <p>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.</p>	<p>Prepare and file to the SEC</p> <p>Effective after 1 business day from the date on which the SEC receives the Registration Statement.</p>
Application for permission to offer trust units for sale	Must be approved by the SEC	The offering for sale of trust units is deemed to be approved by the SEC in general.
Report of results after the offer for sale	Report to the SEC within 15 days from the closing date	
Disclosure of Annual Information	Submit the annual report to the SEC, and disclose the same to the trust unitholders	
Securities	Required	<u>Not</u> required
Minimum Value	Paid-up capital after the offer for sale must not be less than THB 500 million	<u>No</u> requirements
Securing of Loans	Not exceeding 35%, or 60% of the total assets in the case of the REIT's credit rating is within the investment grade	<u>No</u> requirements

If you have any questions in relation to the issues raised in this briefing please contact the authors in the right hand column.

(* "Institutional Investors" are

- (1) Bank of Thailand;
- (2) commercial bank;
- (3) bank established under specific law;
- (4) finance company;
- (5) credit foncier;
- (6) securities company;
- (7) non-life insurance company;

- (8) life insurance company;
- (9) mutual fund;
- (10) private fund managed by a securities company for the investment of ultra-high net worth investors, high net worth investors or investors under (1) to (9) or (11) to (24);
- (11) provident fund;
- (12) Government Pension Fund;
- (13) Social Security Fund;
- (14) National Savings Fund;
- (15) Financial Institution Development Fund;
- (16) derivatives business operator under the Law on Derivatives;
- (17) international financial institution;
- (18) Deposit Protection Agency;
- (19) Stock Exchange of Thailand;
- (20) juristic person in the category of statutory corporation;
- (21) juristic person whose shares are held by the investors under (1) to (20), in aggregate, exceeding 75% of the total voting shares;
- (22) foreign investor having characteristics similar to the investors under (1) to (21);
- (23) fund manager or derivatives fund manager in accordance with the Notification of the Capital Market Supervisory Board concerning Rules on Personnel in Capital Market Business;
- (24) any other investors as specified by the SEC.

“Associated Persons” are any person having one of the following relationships with others:

- (1) spouse or child who has not yet become *sui juris*;
- (2) relationship between a juristic person and its shareholder or partner who holds shares or partnerships directly or indirectly totaling more than 50% of the issued shares or more than 50% of the partnership interest in such juristic person;
- (3) private fund of any person in sub clause (1) or (2) above, but not including any provident fund.)