

# Newsletter

## **THAILAND: SEC ISSUES ANNOUNCEMENTS ON RELAXING CERTAIN OBLIGATIONS OF REITS DUE TO THE IMPACT OF COVID-19**

### Introduction

Due to the continuing impact of the COVID-19 pandemic, the Thai Securities and Exchange Commission (the "SEC") has issued an announcement on relaxing certain obligations of REITs. Details are contained in the Announcement of the Capital Market Supervisory Board No. TorJor. 39/2564 re: Issuance and Offers for Sale regarding Units of REITs (No. 20) (the "Announcement").

This article provides a summary of the key points of the Announcement as follows:

### Removal of the Limitation on the threshold for Variable Rent

Prior to the amendment, if a REIT leased an asset to a third party to operate certain businesses, that the REITs could not operate by itself such as a hotel or hospital business, a fixed amount of rent had to be agreed in advance. If the rent referred to the profits from the operation (variable rent), such portion could not exceed 50% of the fixed rent. However, the continuity of the COVID-19 outbreak has had a significant impact on the operation of the tenants of certain hotel REITs and as a result some tenants have faced difficulty paying a fixed rent to the REIT.

Therefore, under the Announcement the SEC permits REITs to determine the threshold for variable rent with no limitation. However, the agreed fixed rent and variable rent must be disclosed in its filing, prospectus, annual registration statement (Form 56-1) and annual report.

### Extension of Offering Period

Due to the fluctuation in capital markets from the impact of COVID-19, it would be difficult for REITs to predict the capital markets situation for the offering period of new trust units. The SEC regulations, previously, 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.

Therefore, the Announcement provides some relaxation if the offer of new trust units cannot be completed within six months from the date of approval by the SEC. The REIT Manager, giving at least 30-days advance notice, can request the SEC to extend the offering period. If an extension is approved, that extension cannot be more than 12 months from the date of an initial approval. This amendment is in line with the offering period of new shares in the listed company.

### Maintaining the Investment Ratio in the Real Estate.

In addition to the relaxation above, the Announcement also adds an additional requirement for the maintenance of the investment ratio in the real estate. In addition to investment in real estate, REITs can have a policy to invest in other assets (e.g. government bonds, treasury bills, cash deposit in a bank, or the investment units of a property fund or trust units of other REITs). However, to ensure that REITs have continuously invested in real estate from the acquisition date of such assets, the Announcement requires that REITs maintain a minimum ratio for investment in real estate to be not less than 75% of its total assets value at the end of an accounting period.

### Assets Inspection Requirement

In addition to the above, the SEC also issued the Announcement of the Securities and Exchange Commission No. SorRor. 26/2564 re: Provisions relating to Particulars, Terms and Conditions in a Trust Instrument of Real Estate Investment Trust (no. 14). This requires the Trustee and the REIT Manager to complete the inspection of the assets

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invested in by the REITs within 30 days from the date that the REITs have possession of such assets. The Trustee and the REIT Manager are also required to conduct further inspections of such assets at least once a year.

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).