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Newsletter

THAILAND (COVID-19): PROPERTY OWNERS MAY NOW SET BUY-BACK CONDITIONS FROM REITS AND REITS MAY TEMPORARILY OPERATE OTHER BUSINESSES APART FROM RENTING OUT ASSETS

Introduction

One of the impacts of the COVID-19 pandemic has been that several real estate operators are facing difficulty in relation to the liquidity of their businesses, especially hotel operators whose main source of income depends on tourism. To support real estate operators, the Thai Securities and Exchange Commission (the "SEC") has introduced Real Estate Investment Trusts ("REITs") with buy-back conditions. Details are contained in the announcement of the Capital Market Supervisory Board No. TorJor. 3/2564 re: Issuance and Offers for Sale regarding Units of REITs (No. 18) ("**TorJor. 3/2564**") and the announcement of the Securities and Exchange Commission No. SorRor. 4/2564 re: Provisions relating to Particulars, Terms and Conditions in a Trust Instrument of Real Estate Investment Trust (no. 12) (collectively the "**Announcements**").

The Announcements mark an important change to how REITs may temporarily operate. This briefing will discuss key points that investors and business operators should be aware of in relation to the new Announcements.

Announcement details

The Announcements, which became effective on 1 February 2021, introduce 2 key amendments as follows:

- (1) Allowing REITs to invest in assets with a buy-back condition from property owners; and
- (2) Allowing REITs to temporarily operate other businesses, such as hotels and hospitals, in addition to renting assets.

REITs with buy-back conditions

The Announcements classifies two types of REITs with buy-back conditions These include the following:

- (1) REITs with a buy-back obligation; and
- (2) REITs with a buy-back option.

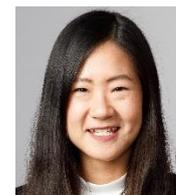
In this regard, the key requirements of each type are summarized in the table below.

	REITs with a Buy-Back Obligation	REITs with a Buy-Back Option
Buy-back Condition	A property owner has an <u>obligation</u> to buy assets back from REITs within a specific date and at the agreed price, as specified in the asset sale and purchase agreement.	A property owner has an <u>option</u> to buy assets back from REITs within a specific date and at the agreed price, as specified in the asset sale and purchase agreement.
Investor	(1) Offering to all types of investors; or (2) Offering to only Institutional Investors or Ultra High Net Worth Investors and must have at least 2 unitholders.	Offering to only Institutional Investors or Ultra High Net Worth Investors and must have at least 2 unitholders.

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Listing Requirement	(1) In the case of offering to all types of investors, trust units must be listed on the Stock Exchange of Thailand. (2) In the case of offering to only Institutional Investors or Ultra High Net Worth Investors, Trust units <u>must not</u> be listed on the Stock Exchange of Thailand.	Trust units <u>must not</u> be listed on the Stock Exchange of Thailand.
Trust Unit Transfer Restrictions	(1) In the case of offering to all types of investors, trust units can be transferred to any type of investor. (2) In the case of offering to only Institutional Investors or Ultra High Net Worth Investors, trust units can be transferred to only Institutional Investors and Ultra High Net Worth Investors, except for cases of inheritance	Trust units can be transferred to only Institutional Investors and Ultra High Net Worth Investors, except for cases of inheritance.
Asset Valuation	The value of the asset must be determined by the income approach and replacement cost approach.	
Asset Sale and Purchase Agreement	The property owner's obligation to buy-back must be created in the form of an agreement, containing at least the following topics: (1) Name of the property owner who has the right to buy-back; (2) Specific date that the property owner will buy-back the asset; (3) Specific buy-back price that must not have any conditions that may affect the price; and (4) Cross-default events which will affect a property owner's ability to buy-back.	The property owner's option to buy-back must be created in the form of an agreement, containing at least the following topics: (1) Name of the property owner who has the right to buy-back; (2) Specific date that the property owner will buy-back the asset; and (3) Specific buy-back price that must not have any conditions that may affect the price. Parties have an option to consider whether to include cross-default events which will affect a property owner's ability to buy-back in the agreement.
Property Owner*	Property owners must be juristic persons and not subject to any restrictions to hold immovable assets under relevant laws. Such property owners must comply with the following conditions: (1) Prepare a financial statement that is audited by an auditor approved by the SEC; and (2) In the case of offering to all types of investors, receive a credit rating from a credit rating agency approved by the SEC.	Property owners must be juristic persons and not subject to any restrictions to hold immovable assets under relevant laws.
Income	REITs with buy-back conditions may also generate income by earning profits by selling back the asset to the property owner.	
Prospectus	REIT Managers of REITs with buy-back conditions shall disclose the additional information in the 69-REIT form, as follows: (1) Summary of conditions to sell the assets back to the property owner; (2) Information in relation to the past performance of the assets (if any); (3) Information of the asset's valuation by means of the income approach and replacement cost approach; (4) Analysis on returns and risks of having buy-back conditions; (5) Sensitivity analysis; (6) Estimated asset's maintenance cost and fund reserve amounts for such maintenance; and (7) Other necessary information (if any).	

*"Property Owner" means the owner of the asset who is selling the asset to the REITs including the same group of persons of such Property Owner.

The SEC provides some relaxation to REIT Managers who can provide suitable and sufficient mechanisms or policies to prevent conflicts of interest, by allowing them to manage more than one REIT with the same type of asset.

Relaxation on operation of REITs

REITs are generally permitted to generate income only by renting out immovable assets and must not operate other businesses. However, the Announcements grant exemptions to such limitations. Pursuant to Tor.Jor. 3/2564, 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. As such, prior to such operation, REITs are required to disclose the cause of change of the lessee and disclose the REITs' operating procedures while seeking a new lessee. The REIT must provide updates every 6 months.

It is important to note that businesses that are to be operated by lessees of REITs are likely to require certain operating licenses under the relevant laws and there are likely to be several conditions, requirements, obligations and liabilities that are attached to those licenses. Trustees and REIT managers of the REITs should carefully consider relevant regulations prior to such licensed business operations.

Conclusion

As a result of ongoing economic struggles caused by the pandemic, the SEC has relaxed certain conditions and limitations for REIT business operators. The easing of prohibitions and relaxations offered under the Announcement may offer some new opportunities for investors and allow more opportunities for existing REITs in the market.

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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