

Newsletter

THAILAND (COVID-19): SEC PUBLISHES ANNOUNCEMENTS ON UPCOMING AGMs AND OTHER MEETINGS OF PROPERTY FUNDS, INFRASTRUCTURE FUNDS AND REITS IN 2021

Introduction

The ongoing COVID-19 pandemic in 2021 will once again mean that statutory requirements for most businesses may not be able to be complied with in the same manner as pre-pandemic times. Infrastructure Funds and REITs are impacted. The Thai Securities Exchange Commission has addressed ongoing concerns related to the risks of viral transmission at large gatherings by issuing two new announcements to address Annual General Meetings (“AGMs”) and other trust unitholder/unitholder meetings set to convene in early 2021.

The announcements permit Funds and REITs to consider alternative arrangements for AGMs and other trust unitholder/unitholder meetings. The alternative meeting options for Infrastructure Funds and REITs are not only important to limit the possible spread of COVID-19, but also because there may be legal ramifications to violations of other laws that prohibit large gatherings, currently in place under Emergency Decrees issued by the Cabinet over the course of the pandemic.

This briefing will discuss the alternatives to traditional AGMs and other industrial trust unitholder/unitholders meetings, as permitted under the Announcements by the SEC.

Overview of Announcements

On 21 January 2021, the Securities and Exchange Commission (the “SEC”) issued the Capital Market Supervisory Board (the “CMSB”) and the SEC announcements to mitigate the risks of holding an AGM and meetings in 2021 during the outbreak of COVID-19, as follows:

- (1) The Announcement of the CMSB No. Tor. Nor./Jor. 10/2564 re: the relaxation of the activities of Property Funds, Infrastructure Funds and Real Estate Investment Trusts in 2021 due to the outbreak of COVID-19 (“Tor. Nor./Jor. 10/2564”), effective from 29 January 2021; and
- (2) The Announcement of the SEC No. Sor. Ror. 7/2564 re: the measures for the 2021 AGM of Real Estate Investment Trusts and the Relaxing Conditions in Trust Deed due to the outbreak of COVID-19 (“Sor. Ror. 7/2564”), effective from 29 January 2021.

(Tor. Nor./Jor. 10/2564 and collectively with Sor. Ror. 7/2564, the “Announcements”).

Alternative meeting formats permissible under the Announcements

The Announcements permit Funds and REITs to consider alternative arrangements for AGMs and Industrial Trust unitholders/unitholders meetings. A summary of the key points of the Announcements are as follows:

- If the agendas to be presented at the AGMs are for acknowledgement only, the fund managers and the REIT managers may consider an alternative arrangement such as providing information to its unitholders or trust unitholders instead of holding a physical meeting. This would be on the condition that the fund managers and the REIT managers provide a forum for questions and answers to such questions are

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disclosed through an appropriate channel. An appropriate channel may include the website of the Stock Exchange of Thailand;

- It is permissible for Funds and REITs to propose to unitholders or trust unitholders resolutions by circulating a letter of proposal to the unitholders or trust unitholders, subject to a specified timeline and certain requirements on voting thresholds; and
- In the case of REITs, if the rights and obligations in the trust deed currently contradict those set out in the Announcement Sor. Ror. 7/2564, the trustees shall amend such trust deed to be in line with that Announcement at the earliest possible time.

Conclusion

With the hope that 2021 would see continued success with Thailand's efforts to battle local transmissions within the country, a second wave of COVID-19 has presented a hurdle to a return of relative normality in daily life and business operations. In response to ongoing concerns about widespread transmission of COVID-19, the Thai authorities continue to make regulatory changes to facilitate business operators to meet their regulatory and statutory requirements. Alternative methods for holding AGMs and other such meetings, although not a new concept in Thailand, continue to evolve to better suit the local situation, and operator/regulator capabilities.

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.

