

2 July 2024

# THAILAND

## Newsletter

### Key Contacts



Tananan Thammakiat

☎ +66-2-009-5126

✉ tananan.t@mhm-global.com



Namita Tangphithakphaibun

☎ +66-2-009-5128

✉ namita.t@mhm-global.com



Sakolrat Srangsomwong

☎ +66-2-009-5095

✉ sakolrat.s@mhm-global.com



Thitiyapa Boonkong

☎ +66-2-009-5137

✉ thitiyapa.b@mhm-global.com

## REIT Liquidation Overhaul: Inside the SEC's Latest Regulations

The Securities and Exchange Commission of Thailand (the "SEC") has recently issued four new regulations to govern two key aspects of Real Estate Investment Trusts (REITs) in Thailand: (1) the liquidation process of a REIT and (2) the deposit in lieu of performance of obligation.

The regulations, which took effect on 16 May 2024, are:

- Notification of the Office of the Securities and Exchange Commission No. SorRor. 9/2567 Re: Rules, Conditions and Procedures for Collection, Disposal and Allocation of Assets of Real Estate Investment Trust, dated 22 April 2024 ("**Notification No. SorRor. 9/2567**");
- Notification of the Office of the Securities and Exchange Commission No. SorShor. 10/2567 Re: Rules, Conditions and Procedures for the Approval of REIT Manager and Standard Conduct (No. 7), dated 22 April 2024 ("**Notification No. SorShor. 10/2567**");
- Notification of the Office of the Securities and Exchange Commission No. SorRor. 11/2567 Re: Provisions relating to Particulars and Terms in a Trust Deed of Real Estate Investment Trust (No. 19), dated 22 April 2024 ("**Notification No. SorRor. 11/2567**");
- Notification of the Office of the Securities and Exchange Commission No. SorThor. 12/2567 Re: Rules, Conditions and Procedures for Application or Notification through Electronic Methods (No. 3), dated 22 April 2024.

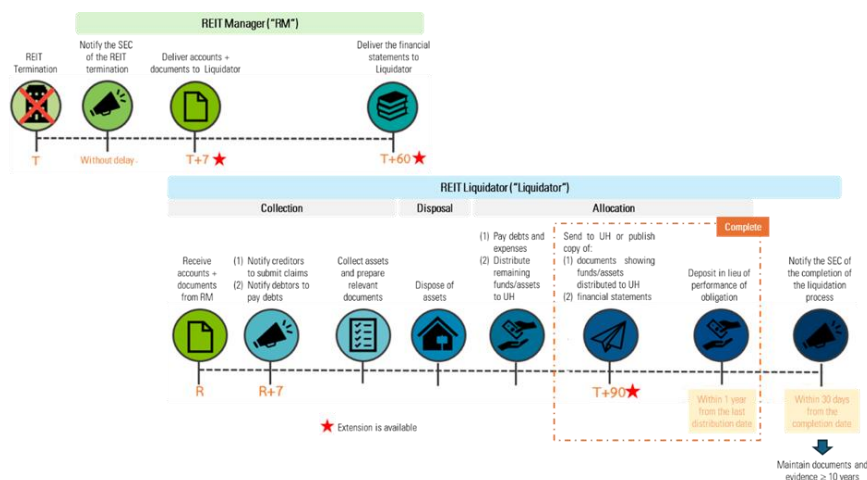
### 1) Liquidation Process of a REIT

The new regulations aim to enhance the efficiency and transparency of the REIT liquidation process by providing clearer and more consistent guidelines for REIT managers, REIT liquidators, and unitholders. The regulations cover the following aspects of REIT liquidation:

- **Extension of the Definition of the REIT Liquidator:** In addition to a trustee, the definition now includes a liquidator of a trustee or an official receiver responsible for collecting, disposing of, and allocating assets, including paying debts and expenses of a REIT upon its termination, as stipulated in Notification No. SorRor. 9/2567 and Notification No. SorRor. 11/2567.

- **Duties of the REIT Manager:** The REIT manager is responsible for notifying the SEC upon termination of a REIT and delivering all relevant accounts, documents, and financial statements to the REIT liquidator, as stipulated in Notification No. SorShor. 10/2567.
- **Duties of the REIT Liquidator:** The REIT liquidator is responsible for collecting assets, disposing of assets, paying debts, and distributing funds or assets to REIT unitholders, as stipulated in Notification No. SorRor. 9/2567.
- **Delegation of Tasks:** The REIT liquidator is permitted to delegate certain tasks to specialists, as stipulated in Notification No. SorRor. 9/2567.
- **Provisions in the Trust Deed:** The particulars and terms in the trust deed must include provisions for the collection, disposal, and allocation of REIT assets upon the REIT's termination, as stipulated in Notification No. SorRor. 11/2567.

The following flow chart summarizes the key steps of the REIT liquidation<sup>1/</sup>:



<sup>1/</sup>Source: SEC Public Hearing No. OrNorRor. 53/2566 Re. Draft Regulations for the Collection, Disposal, and Allocation of Assets of Real Estate Investment Trust

## 2) Deposit in lieu of Performance of Obligation

To facilitate asset allocation and the completion of the REIT liquidation process, Notification No. SorRor. 9/2567 allows the REIT liquidator to make a deposit in lieu of performance of obligation at the competent Deposit of Property Office. The deposit is permissible when the creditor or the unitholder is not reachable or fails to accept payment, provided that the REIT liquidator notifies the creditor or unitholder of the deposit after making the deposit.

In principle, the deposit process is a legal protective measure for debtors to ensure they can fulfill their obligations. As a result, debtors are discharged from the obligation to repay and are not considered in default on payment or in breach of contract.

In practice, several REITs face difficulties in making payments to non-Thai resident unitholders. For example, non-Thai resident unitholders may not cash their cheques. Without an identified place of performance or a domicile in Thailand, REITs cannot legally make a deposit at the competent Deposit of Property Office to non-Thai resident unitholders. To address this issue, Notification No. SorRor. 11/2567 allows the trust deed to include the particulars :

regarding the local domicile for the purpose of making deposits applicable to non-Thai resident unitholders. However, the new regulations do not specify the details of such provision.

Under Thailand's Civil and Commercial Code, a deposit in lieu of performance of obligation must be made at the competent Deposit of Property Office in the area where the obligation is to be performed. In general, the place of performance will be as per the declared intention. Otherwise, performance must be made at the creditor's present domicile.

Accordingly, to include the particulars regarding the local domicile for the purpose of making deposits, the place where the obligation to non-Thai resident unitholders is to be performed should be specified. The trust deed should provide the details of the place of performance. Such specific particulars would be useful when a REIT is unable to fulfil its obligations due to unitholders failing to accept payment, allowing the REIT to make a deposit at the competent Deposit of Property Office.

## Key takeaway:

- Trustees should consider revising the trust deed to ensure that the details of the liquidation process are consistent with the new regulations.
- The trust deed should also include the particulars regarding the place of performance in Thailand for the purpose of a deposit in lieu of performance of obligation. This is to avoid potential difficulties and delays in making payments or delivering assets to creditors or non-Thai resident unitholders in the case where they are unreachable or fail to accept payments.

If you have any questions in relation to the topic raised in this briefing, please contact the authors listed in the left-hand column.

## Contact Us

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

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).