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# 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



Mai Lertpanyanuch

☎ +66-2-009-5140

✉ mai.l@mhm-global.com

## SEC Regulations Update: Modifications to AGM practices and Operational Matters of Real Estate Investment Trusts (REITs)

In order to decrease some operational burdens and to update relevant regulations to be in line with the current circumstances, the Securities and Exchange Commission of Thailand (the "SEC") has decided to amend relevant regulations governing Real Estate Investment Trusts ("REITs") on the following matters which will become effective on 1 February 2024:

### 1. AGM Cancellation

Due to difficulties in achieving a quorum at an annual general meeting ("AGM") which leads to time-consuming and costly processes for convening the AGM, the SEC has issued new regulations to eliminate the requirement for holding AGMs of REITs and has determined to provide an alternative for REITs to communicate with the trust unitholders. The new regulations require the REITs to set up a communication channel in order to deliver essential information annually to trust unitholders within 4 months after the end of each fiscal year. The communication channel must facilitate two-way communication which allows trust unitholders to react or ask questions about the disclosed information. Possible implementations include creating a forum for asking questions and sharing such questions with answers through an appropriate channel or convening unitholders' meetings either electronically or physically.

This amendment also applies to the Infrastructure Investment Trust, Property Fund for Public Offerings, and Infrastructure Fund.

### 2. Commitments under the Registration Statement and Other Documents

Pursuant to the SEC regulation, REIT Managers shall adhere to the commitments given under (i) an application for the issuance of trust unit, (ii) the registration statement, (iii) the prospectus (item (i) to (iii) are collectively referred to as the "REIT Documents"), and (iv) the provisions under the trust deed. However, situations may arise where the REIT Manager is required to deviate from the commitments given under the REIT Documents. Currently, there is no SEC regulation directly addressing this issue. Based on the current practice, if such a situation occurs and the commitment given under the REIT Documents is included in the investment agreement of a REIT, the REIT Manager and Trustee may

propose an amendment to the relevant provision under the investment agreement for approval at the trust unitholders' meeting.

Under the new SEC regulation, if such a situation occurs, the REIT Manager will be required to obtain approval from the trust unitholders, with votes of not less than 3/4 of the total trust units held by the trust unitholders present and entitled to vote at the meeting. The new regulation also requires that votes objecting to the agenda not be more than 10 percent of the total votes of the trust unitholders present and entitled to vote.

It is worth noting that the voting requirement under the new regulations demands a greater vote than that required for amending the investment agreement, which generally requires a vote of not less than 1/2 or 3/4 of the total trust units held by the trust unitholders present and entitled to vote at the meeting.

### 3. Income Guarantee

Currently, there are four requirements for the income guarantee of REITs as seen below:

- 1) a REIT must receive a guarantee of income from any lessee at the amount specified in the contract of income guarantee;
- 2) at least one income guarantor shall be a juristic person;
- 3) there shall be a provision specifying that the income guarantor agrees to bind as the income guarantor and as a joint debtor with the lessee; and
- 4) A three-party memorandum of understanding among the guarantor of income, the lessee and the REIT shall be established, stating that, in case the guarantor of income fails to comply with the contract of income guarantee, it shall be deemed a breach by the lessee.

In practice, there are several instances where the guarantor has no relationship with the lessees of REITs and is unwilling to be a joint debtor with them or enter into any memorandum with them. Consequently, the REIT Manager has to submit a request to the SEC to waive such conditions. To address this practical issue, the SEC has issued a regulation clarifying that the requirements under items 3) and 4) will only apply to cases where the guarantor and the lessees of REITs are related persons.

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)

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