ASIAN LEGAL BUSINESS

the answer company™
THOMSON REUTERS®

MCI (P) 031/02/2018
ISSN 0219 – 6875
KDN PPS 1867/10/2015(025606)

MAY 2018
ASIA EDITION

OFFSHORE STARS
Clients pick their top lawyers

M&A SKILLS
What in-house lawyers need to have

IP RANKINGS 2018

THE BEST LAW FIRMS FOR INTELLECTUAL PROPERTY

FLEXI FUTURE
NewLaw comes of age in Asia

START ME UP
Indonesia attracts tech money

HOT PROPERTY

Thailand launched its real estate investment trust (REIT) scheme in 2014. By the end of last year, total REIT market capitalisation in the country had reached 85 billion baht ($2.6 billion) across two million square metres of assets, and was only set to grow further. REITs are also an important contributor to Thailand's IPOs in the past few years, and all this is generating a significant amount of work for lawyers. BY RANAJIT DAM

Given its rapid growth in Thailand, it's hard to believe that the REIT phenomenon in Thailand is quite recent. It was only in 2014 that the Stock Exchange of Thailand launched a new REIT scheme based in large part on the Singaporean REIT model. As of the end of 2017, total REIT market capitalisation had reached 85 billion baht ($2.6 billion) across two million square metres of assets. Of these, industrial REITs presently constitute about half of the market, followed by speciality assets (such as MICE facilities) and office properties, according to real-estate-focused investment management company Jones Lang LaSalle (JLL).

But the origins of Thailand's REIT market go back at least a decade. In the wake of the 1997 Asian Financial Crisis, the Stock Exchange of Thailand (SET) introduced a new securitised investment vehicle, Property Funds for Public Offering (PFPO), to encourage fresh capital flows into real estate assets. The PFPO scheme, which launched in 2003 and ending ten years later, supported investment in dozens of assets.

"PFPOs have been a popular investment vehicle for Thailand's property developers for some time," say Tananan Thammakiat and Worapan Wuttisarn, senior associates, and Namita Tangpitukpaibul and Tanaporn Rattanapichetkul, associates, at Chandler MHM (CMHM). "However, after 2014, the country's Securities and Exchange Commission (SEC) prohibited new establishment and capital increases in PFPOs, and since then, REITs have become the preferred investment platform. Further, REITs are not a taxable entity until dividends are distributed to unitholders who will then be subject to ten percent withholding on dividends."

Additionally, they say that between 2016 and 2017, the SEC, the Revenue Department (RD), and the Department of Land (DOL) launched tax and fee exemptions to benefit the conversion of PFPOs to REITs, accomplished primarily by reducing and waiving taxes and fees relating to the transfer of assets and liabilities from PFPOs to REITs.

The CMHM lawyers say that the conversion of PFPOs to REITs has resulted in one of the largest REITs to date, CPNREIT, with an approximate total value of $1.562 billion, as well as the two largest industrial REITs, WHART, with an approximate total value of $842.86 million, and TREIT with an approximate total value of $1.1 billion. "This investment trend has meant that since the end of 2014, as sponsors have become familiar with benefits of the REIT platform, many wishing to expand their businesses now look to REITs as an effective vehicle for monetization, and a support for further development."

KEY CHALLENGES

From a lawyer's perspective, work on

REITs differs from other corporate transactions. "Advising on REITs requires a combination of Real Estate, M&A, Capital Markets skills and importantly – diverse and in-depth experience in each area," the CMHM lawyers say. "The work also requires thorough understanding of the SEC, DOL, and the related, evolving regulatory framework."

Indeed, they point out that there are several key areas in which REIT specialists must be accomplished in order to overcome the challenges faced when advising in the dynamic REIT space. "First, assets to be injected into REITs must comply with SEC regulations, so it is imperative that REIT legal specialists are consistently up-to-date with these regulations to help resolve or mitigate the non-compliance factor," they say. "Second, there is structuring. The initial structuring of any REIT is critically important as this is the phase of work that focuses on mitigating the risk factor, and on providing comfort to the SEC and investors. Also, as REITs can involve a broad spectrum of industry sectors, such as shopping malls, factories, warehouses, offices, residential buildings and hotels, legal advisors must fully understand all issues involved in these underlying assets – before they are injected into the REIT. And, overlying the total structuring process, advisors must develop structuring solutions that are practical, innovative, up-to-date, and cost-effective."

Third, they note that information disclosed to the SEC and in the REIT prospectus must be true and correct, so lawyers on REIT transactions must ensure that the information disclosed is compliant in these aspects, in addition to ensuring there are no omissions of material facts. "Finally, there is deal management. There are many parties involved in each REIT transaction, and thus REIT specialists must have excellent organizational skills," the CMHM lawyers conclude.

GROWTH EXPECTED

Looking ahead, Tananan, Worapan, Namita and Tanaporn say that REITs will continue to be a growing investment area for property developers, and investors. "We anticipate that the real estate market in Thailand will remain healthy going forward, with residential, office, retail and the industrial sectors growing at a robust pace given the country's expansion in other areas, such as the Eastern Economic Corridor (EEC), and given the upbeat global outlook," they say.

"This means that many developers, both established, and those just entering the market, will continue to actively seek alternative funding sources, such as REITs. We believe that given the positive outlook for Thailand's real estate market, and the continuing safeguards being launched by the country's SEC, REITs will become an even more appealing investment platform in the future," the CMHM lawyers add.