

11 August 2021

# THAILAND

## Newsletter

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## Thailand: SEC Enhances Regulations to Cover Leasehold Investments to Support REIT Buy-Backs

### Introduction

In February 2021, the Thai Securities and Exchange Commission (the "SEC") introduced Real Estate Investment Trusts ("REITs") with buy-back conditions ("REIT Buy-Back") whereby a property owner has an obligation or an option to buy assets back from a REIT (please see further details in our previous newsletter on REIT Buy-Back Conditions ([LINK](#))). This measure is to support real estate operators who are facing difficulty in relation to the liquidity of their businesses due to the impact of the COVID-19 pandemic. Recently the SEC has permitted a similar mechanism for a REIT that will invest in a leasehold right. REITs may now have a termination option under a lease agreement ("REITs with termination option"). Details of the measure may be found in the announcement of the Capital Market Supervisory Board No. TorJor. 47/2564 re: Issuance and Offers for Sale regarding Units of REITs (No. 22) ("TorJor. 47/2564") and the announcement of the Securities and Exchange Commission No. SorRor. 38/2564 re: Provisions relating to Particulars, Terms and Conditions in a Trust Instrument of Real Estate Investment Trust (no. 16) (collectively the "Announcements") which became effective on 1 July 2021.

The Announcements classify two types of REITs with a termination option. These include the following:

- (1) REITs with a REIT's termination option (as a lessee); and
- (2) REITs with a Lessor's termination option.

The key requirements of each type are summarized in the table below.

	REITs with a REIT's termination option	REITs with a Lessor's termination option
<b>Termination Option</b>	The REIT (as a lessee) has a right to terminate a lease agreement within a specific date and subject to specific conditions, as specified in the lease agreement and the REIT has a right to receive compensation from the lessor from such early termination option.	A lessor has a right to terminate a lease agreement within a specific date and subject to specific conditions, as specified in the lease agreement and the REIT has a right to receive compensation from the lessor from such early termination option.
<b>Investor</b>	(1) Offering to all types of investors; or (2) Offering to only Institutional Investors or Ultra High Net Worth Investors with the condition of having at least 2 unitholders.	Offering to only Institutional Investors or Ultra High Net Worth Investors with the condition of having at least 2 unitholders.
<b>Listing Requirement</b>	(1) In the case of an offering to all types of investors, trust units must be listed on the Stock Exchange of Thailand. (2) In the case of an 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.
<b>Trust Unit Transfer Restrictions</b>	(1) In the case of an offering to all types of investors, trust units can be transferred to any type of investor. (2) In the case of an offering to only Institutional Investors or Ultra High Net Worth Investors, trust units can only be transferred to 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 in cases of inheritance.
<b>Asset Valuation</b>	The value of the asset must be determined by the income approach and replacement cost approach.	
<b>Asset Sale and Purchase Agreement</b>	The REIT's termination option must be created in the form of an agreement, containing at least the following: (1) Name of the person (the REIT) who has the right to terminate the lease agreement; (2) Specific date that the REIT can exercise the right to terminate the lease agreement; (3) Cross-default events which will affect a lessor's ability to pay the compensation; (4) Compensation amount which must be provided in a specific amount or in a specific formula; and (5) Specific conditions for exercising a termination right.	The Lessor's termination option must be created in the form of an agreement, containing at least the following: (1) Name of the person (the Lessor) who has the right to terminate the lease agreement; (2) Specific date that the lessor can exercise the right to terminate the lease agreement; and (3) Compensation amount which must be provided in a specific amount or in a specific formula; and (4) Specific conditions for exercising a termination right. Parties have an option to consider whether to include cross-default events which will affect a lessor's ability to pay the compensation.

	REITs with a REIT’s termination option	REITs with a Lessor’s termination option
<b>Lessor</b>	<p>A lessor must be a juristic person and not subject to any restrictions to hold immovable assets under relevant laws. Such lessor must comply with the following conditions:</p> <ol style="list-style-type: none"> <li>(1) Prepare a financial statement that is audited by an auditor approved by the SEC; and</li> <li>(2) In the case of an offering to all types of investors, receive a credit rating from a credit rating agency approved by the SEC.</li> </ol>	<p>Lessor must be a juristic person and not subject to any restrictions to hold immovable assets under relevant laws.</p>
<b>Prospectus</b>	<p>REIT Managers of REITs with a termination option shall disclose additional information in the 69-REIT form, as follows:</p> <ol style="list-style-type: none"> <li>(1) Summary of conditions and time frame for exercising the termination right;</li> <li>(2) Information in relation to the past performance of the assets (if any);</li> <li>(3) Information on the asset’s valuation by means of the income approach and replacement cost approach;</li> <li>(4) Analysis on returns and risks of having a termination condition;</li> <li>(5) Sensitivity analysis;</li> <li>(6) Estimated maintenance cost for the asset and fund reserve amounts for such maintenance; and</li> <li>(7) Other necessary information (if any).</li> </ol>	

If you would like to discuss the issues raised in this article further or related issues, please contact the authors listed in the left-hand column

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