

CHANDLER MHM

Newsletter

ALTERNATIVE VEHICLES FOR PERMISSIBLE INDIRECT INVESTMENTS BY REITS

An indirect investment by a REIT was previously limited to the REIT investing through a shareholding structure of a company which had a freehold or leasehold right over real estate. This was in accordance with the Notification of the Capital Market Supervisory Board No. Tor Jor. 49/2555. Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust ("**Tor Jor. 49/2555**").

Recent Notifications of the Capital Market Supervisory Board ("**CMS**") and the Office of Securities and Exchange Commission (the "**SEC**") ("**Notifications**") have expanded the scope of permissible indirect investment by REITs. REITs may now indirectly invest in real estate by investing in other Trusts established under Thai law or Foreign law ("**Trusts**") in addition to investing through a shareholding structure of a company.

If a REIT makes an indirect investment in real estate through a Trust, the Notifications do not require the REIT to nominate a person to act as a director of the Trusts as would be the case for a REIT that investing through a shareholding structure of a company.

However, the Notifications still require certain mechanisms to ensure that the REIT will have sufficient control over the real estate even if a director will not be appointed to the Trusts. A fundamental requirement of the Notification is that the REIT Manager demonstrates that it has in place supervisory mechanisms for the Trusts over key operational matters. In addition, appropriate approvals from the board of directors of the REIT Manager or the unitholders of the REIT must be required (as applicable) prior to carrying out such key operational matters. The key operational matters of the Trusts may include the following:

- (1) entry into a connected party transaction or any other material transactions;
- (2) acquisition, transfer or disposition of the real estate;
- (3) amendment of material documents;
- (4) ceasing or changing the business operation;
- (5) changing of capital structure;
- (6) issuing the securities;
- (7) borrowing;

The expansion of the scope of permissible indirect investment by REITS through domestic Trusts or international Trusts, would greatly facilitate REITS in diversifying their portfolios and building exposure to real estate markets around the world.

The Notifications, effective from 1 May 2021. as referred to above are:

- (1) Notifications of CMS No. Tor Jor. 28/2564 Re: Issuance and Offer for Sale regarding Units of Real Estate Investment Trust (No. 19) ("**Tor Jor. 28/2564**"), amending Tor Jor. 49/2555 (as amended);
- (2) Notifications of the SEC No. Sor Lor. 20/2564 Re: Provisions relating to Particulars, Terms and Conditions in a Trust Instrument of Real Estate Investment Trust (No. 13) ("**Sor Lor. 20/2564**"), amending Notifications of the SEC No. Sor Lor. 26/2555 Re: Provisions relating to Particulars, Terms and Conditions in a Trust Instrument of Real Estate Investment Trust (as amended); and
- (3) Notifications of CMS No. Tor Jor. 29/2564 Re: Rules, Conditions and Procedures for Disclosure of Mutual Fund and Real Estate Investment Trust or Infrastructure Trust (No. 9) ("**Tor Jor. 29/2564**"), amending

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Notifications of CMS No. Tor Jor. 20/2561 Re: Rules, Conditions and Procedures for Disclosure of Mutual Fund and Real Estate Investment Trust or Infrastructure Trust (as amended).

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.



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.