



## Timely Newsletter

### Amendment to Indirect Investment Requirements of Real Estate Investment Trusts (REITs)

#### Introduction

In the case of an indirect investment by a Real Estate Investment Trust (“REIT”) the REIT must hold shares in a company being invested in at a threshold of no less than 99% of the outstanding shares and the voting rights of such company. This shareholding requirement became a limitation for outbound investments by Thai REITs due to restrictions on shareholding ratios for foreign shareholders, which may not reach the threshold of 99% in some countries. In this regard, the Securities and Exchange Commission of Thailand (the “SEC”) has amended such requirement by issuing Notification No. Tor Jor. 7/2562 re: Issuance and Offers for Sale regarding Units of REITs (no. 15) on 20 February 2019, which became effective on 16 March 2019 (the “Notification”). The Notification amended Notification No. Tor Jor. 49/2555. The amendment focuses predominantly on two key points, which are shareholding ratios for indirect investment and governance measures for companies that are invested into by REITs.

#### Clarification of a Wholly-Owned Subsidiary of REITs

The Notification defines a “Wholly-Owned Subsidiary” of REITs for indirect investment schemes as any subsidiary on one or more levels of subsidiaries wherein a REIT holds more than 99% of the outstanding shares and the voting rights of such subsidiary.

#### Amendment of Shareholding Ratio

For indirect investment in a principal asset, a REIT is required, under the new regulation, to hold no less than 99% of the total shares and voting rights. However, such requirement can be reduced subject to the following conditions:

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1. In a case where the asset owner is not a related person to the REIT Manager, i.e., the asset owner is a third party that often makes it impossible for a REIT to hold all the shares in such company, the SEC reduces the shareholding ratio to be no less than 75% of the total shares and voting rights of the company. In a case where there is more than one level of subsidiaries, calculated on a pro rata basis, the REIT must hold not less than 51% of the total shares of the company.
2. In a case where the REIT is unable to hold shares in the company up to the ratio of 99% or 75% of the total shares and voting rights of the company as mentioned above because of restrictions under relevant laws (i.e. foreign restrictions on holding titles to plots of land), a REIT or its wholly-owned subsidiary may hold shares, cumulatively, of no less than the maximum amount for the shareholding level set by such laws, which shall be no less than 40% of the voting rights of the company. In such a case, the REIT must demonstrate that it has the authority to manage the company per its shareholding ratio.

## **Governance Measures**

Under the new regulation, in the event that a REIT has indirect investment through a company, the REIT Manager must be able to demonstrate that there are governance measures for such company, for example arranging representatives to be the directors of the company per its shareholding ratio, clearly specifying duties and obligations of such directors, and supervising all material transactions of the company. The purpose of this amendment is to ensure that if the shareholding ratio requirement has been decreased in certain cases, a REIT maintains control and supervises its subsidiary company to comply with relevant laws and regulations.

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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 person(s) at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed in the far-right column.