



Overview of REITs with buy-back conditions: The new mechanisms to help real estate owners survive in the midst of Covid-19

It is apparent that the Covid-19 pandemic has had a tremendous impact on every business sector. Above all, the hospitality industry has taken the hardest hit, as tourism is its primary source of revenue. Due to a lack of financial liquidity and growing expenditure, it is not an overstatement to predict that real estate owners in the hospitality sector would be compelled to sell their operating assets potentially at an unfavorable price in order to survive during this challenging time.

On February 1, 2021, Thailand's Securities and Exchange Commission (the "SEC") announced a new regulation regarding real estate investment trusts (the "REIT") with buy-back conditions, which are distinct from typical REITs. The ultimate goal is to help real estate investors improve their financial condition by selling their assets to REITs. The structure of REITs with buy-back conditions will allow real estate owners to repurchase their assets within a defined period of time and at a predetermined price.

On June 11, 2021, the Capital Market Supervisory Board issued the Announcement of the Capital Market Supervisory Board TorJor. 47/2564 re: Issuance and Offers for Sale regarding Units of REITs (No. 22), which came into effect on July 1, 2021 (the "Regulation"), defining two types of REITs with buy-back conditions for offering to (1) General Investors or (2) Institutional Investors or Ultra-High Net Worth Investors.

According to the Regulation, buy-back conditions can be agreed upon between REITs and real estate owners, including a defined date and price for the asset's buyback.

The key similarities and differences between these two types of REITs with buy-back conditions may be seen in the table below:

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Topic	(1) REITs with buy-back condition offering to General Investors	(2) REITs with buy-back condition offering to Institutional Investors or Ultra-High Net Worth Investors
Condition	The former owner has an <u>obligation</u> to purchase the assets within the predetermined time and at the agreed price, as specified in the Asset Sale and Purchase Agreement.	The former owner has an <u>obligation</u> or <u>option</u> to repurchase the assets within the predetermined time and at the agreed price, as specified in the Asset Sale and Purchase Agreement or Sale with the right to redemption Agreement.
Asset Valuation	The asset to be acquired must be appraised by a) income approach; and b) replacement cost approach.	
The Qualification of Former Owner	The former owner must have the following qualifications: a) must be a juristic person and not be subject to a restriction on holding the ownership of assets under the relevant laws; b) must prepare a financial statement that is audited by an auditor approved by the SEC; and c) (c) must receive a credit rating from a credit rating agency approved by the SEC.	The former owner must have the following qualifications: (a) must be a juristic person and not be subject to a restriction on holding the ownership of assets under the relevant laws; and (b) must prepare a financial statement that is audited by an auditor approved by the SEC.
Procurement of interest	REITs with buy back conditions may generate income by earning profits from selling back the assets to the former owner.	

About Us

Real Estate Practice

The Real Estate, Hotel, Resorts, and Tourism Practice Group of Kudun and Partners has extensive experience in all sectors of the real estate industry. Throughout the career of our senior lawyers previously worked at large international firms, we continue to be engaged by investors, developers, operators and financiers on all aspects of real estate transactions.

We advise on the formation and structuring of property and infrastructure funds and REITs while also provide a full spectrum of securities, tax and regulatory issues to sponsors, financial advisors and underwriters.

We leverage our unparalleled legal prowess to optimise the business operations of our clients as Thailand's real estate industry continue to grow year by year.

Listing on the Stock Exchange of Thailand	All trust units must be listed on the Stock Exchange of Thailand.	No trust unit will be listed on the Stock Exchange of Thailand.
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In addition to the REITs with buy-back conditions for freehold assets, the SEC’s Regulation introduced a new structure of REITs to cover investments over leasehold asset, known as “REITs with termination options”. The leasehold investment criteria are similar to those for freehold investments, albeit with a few minor modifications.

REITs with termination options are divided into two types, depending upon who can exercise the right to terminate the lease agreement, either by (a) REITs (as the lessee) or (b) the lessor. The fundamental information of REITs with termination options is summarized as follows:

Type	Key Details
REITs with REIT’s termination options	<ol style="list-style-type: none"> 1) REIT (as the lessee) has the right to terminate the lease within the specific time and upon the conditions, as specified in the lease agreement. Upon termination, REIT is entitled to receive compensation from such termination with a specific amount or according to a fixed formula; 2) Trust’s units may be offered to general investors, institutional investors or ultra-high-net-worth investors; and 3) The qualification of the lessor depend upon the offering to investor: <ol style="list-style-type: none"> a) Offering to general investors The lessor must have the same qualifications as those required for REITs with buy-back condition offered to general investors. b) Offering to institutional investors or ultra-high-net-worth investors c) The lessor must have the same qualifications as in a), except for the requirement to prepare for credit rating.
REITs with Lessor’s termination options	<ol style="list-style-type: none"> 1) The lessor has the right to terminate the lease within the specific time and upon the conditions as specified in the lease agreement, and the REIT is entitled to receive compensation from such termination;

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| | <ol style="list-style-type: none">2) Trust's units may be offered only to institutional investors or ultra-high net worth investors; and3) The lessor must be a juristic person and not be subject to a restriction on holding ownership of assets under the relevant laws. | |
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We believe that structuring REITs with buy-back conditions and REITs with termination options would help alleviate the current tension in the real estate industry as it paves the way for real estate owners to seek financial assistance through a sale or lease of asset to REITs. On the other hand, investors in REITs can rest assured that the REITs will generate steady income and gain project margin once the real estate owner repurchases the asset.

For more information, please contact the authors or our team at Kudun and Partners.

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