

S No 2639

H No. 6379

Republic of the Philippines
Congress of the Philippines
Metro Manila

Fourteenth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand nine.



[REPUBLIC ACT NO. 9856]

AN ACT PROVIDING THE LEGAL FRAMEWORK FOR REAL ESTATE INVESTMENT TRUST AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

ARTICLE I

GENERAL PROVISIONS

SECTION 1. *Short Title.* - This Act shall be known as "The Real Estate Investment Trust (REIT) Act of 2009".

SEC. 2. *Declaration of Policy.* - It is the policy of the State to promote the development of the capital market, democratize wealth by broadening the participation of Filipinos in the ownership of real estate in the Philippines, use the

capital market as an instrument to help finance and develop infrastructure projects, and protect the investing public by providing an enabling regulatory framework and environment under which real estate investment trusts, through certain incentives granted herein, may assist in achieving the objectives of this policy.

SEC. 3. *Definition of Terms.* – For the purposes of this Act, the term:

(a) “Adviser” means a lawyer, accountant, auditor, financial or business consultant, and such other persons rendering professional advisory services to the real estate investment trust.

(b) “Affiliate” means a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of another corporation, which thereby becomes its parent corporation.

(c) “Associate” of a person includes:

i. Any relative of such person within the fourth (4th) degree of consanguinity or affinity; and

ii. Any company in which he/she and his/her relative within the fourth (4th) degree of consanguinity or affinity, directly or indirectly, has an interest of twenty-five percent (25%) or more.

(d) “Cash Equivalent Items” means instruments or investments that are highly liquid and marketable and are considered good as cash as determined in accordance with the rules and regulations prescribed by the Commission.

(e) “Commission” or “SEC” means the Securities and Exchange Commission of the Philippines.

(f) “Constitutive Documents” means the articles of incorporation and bylaws of a REIT.

(g) “Control” exists in favor of a parent corporation when it has the power to direct or govern the financial and operating

policies of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly, through subsidiaries, more than one-half (1/2) of the voting power of an enterprise, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even when the parent owns one-half (1/2) or less of the voting power of an enterprise when there is power:

- i. Over more than one-half (1/2) of the voting rights by virtue of an agreement with investors;
- ii. To direct or govern the financial and operating policies of the enterprise under a statute or an agreement;
- iii. To appoint or remove the majority of the members of the board of directors or equivalent governing body; or
- iv. To cast the majority votes at meetings of the board of directors of equivalent governing body.

(h) "Corporation Code" refers to Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines.

(i) "Deposited Property" means the total value of the REIT's assets based on the latest valuation determined in accordance with the rules and regulations promulgated by the Commission.

(j) "Distributable Income" means net income as adjusted for unrealized gains and losses/expenses and impairment losses and other items in accordance with internationally accepted accounting standards. Distributable income excludes proceeds from the sale of the REIT's assets that are re-invested in the REIT within one (1) year from the date of the sale.

(k) "Exchange" means any entity registered with the Commission as a stock exchange pursuant to the Securities Regulation Code.

(l) "Fund Manager" refers to the person responsible for the allocation of the deposited property to the allowable investment outlets and selection of income-generating real

estate. It shall execute investment strategies for the REIT and oversee and coordinate all of the following activities: property acquisition; property management; leasing; operational and financial reporting (including operating budgets); appraisals; audits; market review; accounting and reporting procedures, as well as refinancing and asset disposition plans. For clarity, a fund manager is considered independent from the REIT and its sponsors/promoters under this Act if it is in compliance with the independence, corporate governance (including the fit and proper rule) and other requirements prescribed by this Act, its implementing rules and regulations and the Commission.

(m) "Income-generating Real Estate" means real property which is held for the purpose of generating a regular stream of income such as rentals, toll fees, user's fees and the like, as may be further defined and identified by the Commission. The Commission may promulgate rules to include real rights over real property, provided they generate interest or other regular payments to the REIT.

(n) "Independent Director" means a director who has the qualifications and none of the disqualifications of an independent director specified in the Securities Regulation Code and its implementing rules and regulations.

(o) "IRR" refers to the implementing rules and regulations promulgated to implement the provisions of this Act.

(p) "Investible Funds" refer to funds of the REIT that can be placed in investment vehicles other than income-generating real estate such as real estate-related assets, managed funds, government securities, and cash and cash equivalents.

(q) "Investor" means the owner of investor securities or investor shares.

(r) "Investor Securities" or "Investor Shares" mean shares of stock issued by a REIT or derivatives thereof.

(s) "Managed Funds" mean any arrangement whereby funds are solicited from the investing public and pooled for

the purpose of investing in securities duly registered with and/or approved by the appropriate regulatory agency of the government for investment by the REIT.

(t) "Material Contract" refers to an agreement or arrangement where the amount involved is at least five percent (5%) of the deposited property of the REIT or which is not entered into in the ordinary course of business of the REIT: *Provided, however*, That the following shall be deemed a material contract regardless of the amount:

- i. Related party transactions under Section 8.11 hereof;
- ii. Contract between the REIT and fund manager;
- iii. Agreement between the REIT and property manager;
- iv. Agreements between and among shareholders such as voting trust agreements, pooling agreements, joint venture agreements or other shareholder agreements as may be determined by the Commission;
- v. Any acquisition or disposition of real estate by the REIT;
- vi. Contracts relating to investments of the REIT under Section 8.3 hereof;
- vii. Any contract creating mortgages, encumbrances, liens or rights on the real estate of the REIT;
- viii. Contract of any nature that limits the declaration or distribution of dividends by the REIT;
- ix. Any contract relating to joint venture, spin-off, consolidation or merger involving the REIT; and
- x. Any contract that may be expected to materially affect the market activity and/or the price of the investor securities issued by the REIT as may be determined by the Commission.

(u) "Net Asset Value" or "NAV" means the total assets less total liabilities as determined by the implementing rules and regulations (IRR) of the Commission.

(v) "Net Income" means net income as determined under the Philippine Financial Reporting Standards (PFRS).

(w) "Overseas Filipino Investor" refers to an individual citizen of the Philippines who is working abroad, including one who has retained or reacquired his Philippine citizenship under Republic Act No. 9225, otherwise known as the "Citizenship Retention and Re-acquisition Act of 2003".

(x) "Parent" means a corporation which has control over another corporation, directly or indirectly, through one or more intermediaries.

(y) "Principal Officer" means the chairman of the board of directors, president, chief executive officer, chief operating officer, treasurer, chief financial officer, corporate secretary, vice president, their equivalent positions, or such other officers occupying positions of significant influence in a company as may be determined by the Commission.

(z) "Principal Stockholder" means a stockholder who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of security of the REIT.

(aa) "Public Shareholder" means a shareholder of a REIT other than the following persons (non-public shareholders):

- i. The sponsor/promoter of the REIT;
- ii. A director, principal officer or principal shareholder of the sponsor/promoter of the REIT;
- iii. A director, principal officer or principal shareholder of the REIT;
- iv. An associate of a director, principal officer or principal shareholder of the REIT or its sponsor/promoter;

v. A related corporation to the REIT or its sponsor/promoter; and

vi. Any person who holds legal title to the shares of stock of the REIT for the benefit of another for the purpose of circumventing the provisions of this Act.

(bb) "Property Manager" refers to a professional administrator of real properties who is engaged by the REIT to provide property management services, lease management services, marketing services, project management services, including rent collection, tenant services, care of the physical plant, security, leasing, marketing of the property to outside prospects, and other similar services pertaining to the property under administration. For clarity, a property manager is considered independent from the REIT and its sponsor(s)/promoter(s) under this Act if it is in compliance with the independence, corporate governance (including the fit and proper rule) and other requirements prescribed by this Act, its IRR and the Commission.

(cc) "Real Estate Investment Trust" or "REIT" is a stock corporation established in accordance with the Corporation Code of the Philippines and the rules and regulations promulgated by the Commission principally for the purpose of owning income-generating real estate assets. For purposes of clarity, a REIT, although designated as a "trust", does not have the same technical meaning as "trust" under existing laws and regulations but is used herein for the sole purpose of adopting the internationally accepted description of the company in accordance with global best practices.

(dd) "Real Property" shall have the same definition as "Immovable Property" under Article 415 of the Civil Code of the Philippines. Real estate, when used in this Act, shall have the same meaning as real property.

(ee) "REIT Plan" refers to the plan, including its amendments, of the REIT registered with the Commission.

(ff) "Real Estate-Related Assets" mean:

i. Debt securities and listed shares issued by listed property companies; or

ii. Other funds and assets, including personal property, incidental to the ownership of real estate.

(gg) "Related Corporation" means the parent, subsidiary or affiliate of the REIT.

(hh) "Related Party" includes:

i. The director, officer or principal stockholder of the REIT or associate of such persons;

ii. The sponsor/promoter of the REIT;

iii. The fund manager of the REIT;

iv. The adviser of the REIT;

v. The property manager of the REIT;

vi. A director, principal shareholder or principal officer of the sponsor/promoter of the REIT, REIT's fund manager or property manager, or associate of any such persons; and

vii. Related corporation to the REIT.

(ii) "Securities Regulation Code" or "SRC" refers to the Securities Regulation Code of 2000 and its implementing rules and regulations.

(jj) "Sponsor/Promoter" means any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, contributes cash or property in incorporating a REIT.

(kk) "Subsidiary" means a corporation more than fifty percent (50%) of the voting stock of which is owned or controlled, directly or indirectly, through one or more intermediaries, by another corporation, which thereby becomes its parent corporation.

(ll) "Synthetic Investment Products" are derivatives and other securities created exclusively out of one or more financial instruments to simulate the returns of the underlying financial instruments, such as credit-linked notes, collateralized debt obligations, total return swaps, credit spread options, credit default options, and similar products determined by the Commission.

(mm) "Taxable Net Income" means the pertinent items of gross income specified in Section 32 of the National Internal Revenue Code of 1997, as amended, less all allowable deductions enumerated in Section 34 of the National Internal Revenue Code of 1997, as amended, less the dividends distributed by a REIT out of its distributable income as of the end of the taxable year as: (a) dividends to owners of the common shares; and (b) dividends to owners of the preferred shares pursuant to their rights and limitations specified in the articles of incorporation of the REIT.

ARTICLE II

REAL ESTATE INVESTMENT TRUST

SEC. 4. *Investment in the REIT.* - Investment in the REIT shall be by way of subscription to or purchase of shares of stock of the REIT.

No shares of stock of the REIT shall be offered for subscription or sale except in accordance with a REIT plan and other requirements and restrictions as may be prescribed by the Commission.

SEC. 5. *Registration and Listing.* - The shares of stock of the REIT must be registered with the Commission and listed in accordance with the rules of the Exchange.

SEC. 6. *Nationality Requirement.* - A REIT that owns land located in the Philippines must comply with foreign ownership limitations imposed under Philippine law.

SEC. 7. *Dividend Distribution.* - A REIT must distribute annually at least ninety percent (90%) of its distributable income as dividends to its shareholders not later than the last day of the fifth (5th) month following the close of the fiscal

year of the REIT. Subject to the provisions of this Act, the dividends shall be payable only from out of the unrestricted retained earnings of the REIT as provided for under Section 43 of the Corporation Code of the Philippines. The percentage of dividends received by the public shareholders to the total dividends distributed by the REIT from out of its distributable income must not be less than such percentage of their aggregate ownership of the total outstanding shares of the REIT. Any structure, arrangement or provision which would have the effect of diminishing or circumventing in any form this entitlement to dividends shall be void and of no force and effect.

Distributable income excludes proceeds from the sale of the REIT's assets that are re-invested by the REIT within one (1) year from the date of the sale.

SEC. 8. *Requirements.* - Unless the Commission provides otherwise and after public hearing, taking into account public interest, the need to protect investors and develop the country's real estate investment industry to make it globally competitive, the following requirements shall apply:

8.1 Minimum Public Ownership - A REIT must be a public company and to be considered as such, a REIT must: (a) maintain its status as a listed company; and (b) upon and after listing, have at least one thousand (1,000) public shareholders each owning at least fifty (50) shares of any class of shares who in the aggregate own at least one-third (1/3) of the outstanding capital stock of the REIT.

The Commission shall prescribe a recording and monitoring system that will effectively ensure that the shares of the public shareholders are traceable to their names and for their own benefit and not for the benefit of any of the non-public shareholders mentioned above.

Compliance with the minimum public ownership requirement under this section must be duly certified by a responsible person designated by the Commission upon listing, as of record date for any dividend declaration or any corporate action requiring shareholder approval and other relevant times as may be required by the IRR of this Act.

8.2 Capitalization – A REIT must have a minimum paid-up capital of Three hundred million pesos (Php300,000,000.00).

8.3 Allowable Investments – A REIT may only invest in:

i. Real estate, whether freehold or leasehold, located in the Philippines. A REIT may invest in income-generating real estate located outside of the Philippines: *Provided*, That such investment does not exceed forty percent (40%) of its deposited property and only upon special authority from the Commission. The Commission in issuing such authority shall consider, among others, satisfactory proof that the valuation of assets is fair and reasonable. An investment in real estate may be by way of direct ownership or a shareholding in an unlisted special purpose vehicle constituted to hold/own real estate;

ii. Real estate-related assets, wherever the issuers, assets, or securities are incorporated located, issued, or traded;

iii. Managed funds, debt securities and listed shares issued by local or foreign non-property corporations;

iv. Government securities issued on behalf of the Philippine government or governments of other countries and securities issued by multilateral agencies;

v. Cash and cash equivalent items; and

vi. Such other similar investment outlets as the Commission may allow.

8.4 Investment in Synthetic Investment Products – A REIT may invest not more than five percent (5%) of its investible funds in synthetic investment products such as, but not limited to, credit default swaps, credit-linked notes, collateralized debt obligations, total return swaps, credit spread options, and credit default options, and only upon special authority from the appropriate regulatory authority.

8.5 Income-generating Real Estate – At least seventy-five percent (75%) of the deposited property of the REIT must be invested in, or consist of, income-generating real estate.

8.6 Property Development – A REIT must not undertake property development activities whether on its own, in a joint venture with others, or by investing in unlisted property development companies, unless it intends to hold the developed property upon completion. The total contract value of property development activities undertaken and investments in uncompleted property developments should not exceed ten percent (10%) of the deposited property of the REIT.

8.7 Single Entity Limit – Not more than fifteen percent (15%) of investible funds of the REIT may be invested in any one issuer's securities or any one managed fund, except with respect to government securities where the limit is twenty-five percent (25%).

8.8 Foreign Assets – A REIT may invest in local or foreign assets, subject to the terms of its articles of incorporation. Where an investment in a foreign real estate asset is made, the REIT should ensure that the investment complies with all the applicable laws and requirements in that foreign country such as, but not limited to, foreign ownership restrictions, if any, and requisites of having good and valid title to that real estate.

8.9 Joint Venture – When investing in real estate as a joint owner, the REIT should make such investment by acquiring shares or interests in an unlisted special purpose vehicle constituted to hold/own the real estate and the REIT should have freedom to dispose of such investment. The joint venture agreement, memorandum and articles of association or other constitutive documents of the special purpose vehicle should provide for a minimum percentage of distributable profits of the special purpose vehicle that will be distributed and grant the REIT veto rights over key operational issues of the special purpose vehicle.

8.10 Aggregate Leverage Limit – The total borrowings and deferred payments of a REIT should not exceed thirty-five percent (35%) of its deposited property: *Provided, however,* That the total borrowings and deferred payments of a REIT that has a publicly disclosed investment grade credit rating by a duly accredited or internationally recognized rating agency

may exceed thirty-five percent (35%) but not more than seventy percent (70%) of its deposited property.

8.11 Related Party Transactions – Any contract or amendment thereto, between the REIT and related parties, including contracts involving the acquisition or lease of assets and contracts for services, must comply with the following minimum requirements:

i. Full, fair, timely and accurate disclosures on the identity of the parties, their relationship with the REIT, and other important details of the transaction have been made to the Exchange and the Commission;

ii. Be on fair and reasonable terms, including the contract price;

iii. Approved by at least a majority of the entire membership of the board of directors, including the unanimous vote of all independent directors of the REIT;

iv. Accompanied by a fairness opinion by an independent appraiser done in accordance with the valuation methodology prescribed by the Commission, in the case of an acquisition or disposition of real estate assets and property or share swaps or similar transactions; and

v. Any other matter that may be materially relevant to a prospective investor in deciding whether or not to invest in the REIT.

8.12 Valuation – A full valuation of a REIT's assets must be conducted by an independent appraisal company, duly accredited by the Commission, at least once a year in accordance with the applicable rules of asset valuation and valuation methodology as prescribed by the Commission.

8.13 Fund Manager – A REIT must appoint a fund manager that is independent from the REIT and its sponsor(s)/ promoter(s) and shall be subject to the following minimum requirements:

i. It must be a corporation duly organized under the laws of the Republic of the Philippines or a foreign corporation engaged in the business of fund management with proven track record and duly licensed to do business in the Philippines by the appropriate regulatory agency;

ii. It must have a minimum paid-up capital stock or assigned capital of Ten million pesos (Php10,000,000.00), unless the Commission provides otherwise;

iii. Its office in the Philippines must have a meaningful role in its business activities and must perform accounting, compliance and investor relations services in the Philippines;

iv. It must comply with the requirements of the relevant law or appropriate regulatory authority on the number of independent directors;

v. It must comply with the corporate governance requirements, including the fit and proper rule, prescribed by this Act and its IRR;

vi. It must adopt measures as may be prescribed by the IRR of this Act to avoid conflicts of interest in the discharge of its duties as fund manager for the REIT; and

vii. It must employ a resident chief executive officer and at least two (2) full-time professional employees who have a track record and experience in financial management as well as experience in the real estate industry.

8.14 REIT Property Manager – The REIT must appoint a REIT property manager who shall be responsible for managing the real estate assets such as apartment buildings, office buildings, warehouses, hospital buildings, medical facilities, hotel buildings, resort facilities, manufacturing plants and other physical assets of the REIT. The contract between the REIT and the property manager must comply with the disclosure and other requirements prescribed for related party transactions.

The REIT property manager shall be independent from the REIT and its sponsor/promoter and possess the

qualifications and be subject to such functions and responsibilities, restrictions and other requirements prescribed by the Commission.

The property manager must comply with the following minimum qualifications:

i. It must comply with the requirement of the SRC or the Commission on the number of independent directors;

ii. It must comply with the corporate governance requirements, including the fit and proper rule, prescribed by this Act and its IRR; and

iii. It must adopt measures as may be prescribed by the IRR of this Act to avoid conflicts of interest in the discharge of its duties as property manager for the REIT.

8.15 Independent Directors – At least one-third (1/3) of the board of directors of a REIT must be independent directors.

8.16 Fit and Proper Rule – To maintain the quality of management of the REIT and afford better protection to REIT investors, the Commission, or the concerned regulatory agency, shall prescribe or pass upon and review the qualifications and disqualifications of individuals elected or appointed as directors or officers of the REIT, REIT fund managers, REIT property managers, distributors and other REIT participants and disqualify those found unfit. The appropriate regulatory agency may disqualify, suspend or remove any director or officer who commits or omits an act which renders him unfit for the position.

In determining whether an individual is fit and proper to hold the position, regard shall be given to his integrity, experience, education, training, and competence: *Provided, however,* That the following persons shall in no case be allowed to serve or act in the capacity of officer, director or consultant of any REIT, REIT fund manager, or REIT property manager:

i. Any person convicted of any crime involving any security or financial product;

ii. Any person convicted of an offense involving fraud or embezzlement, theft, estafa or other fraudulent acts or transactions;

iii. Any person who, by reason of any misconduct, is enjoined by order, judgment, or decree by any court, quasi-judicial body or administrative agency of competent jurisdiction from acting as a director, officer, employee, consultant, or agent occupying any fiduciary position;

iv. Any person found by the appropriate regulatory agency to have violated, or aided, abetted, counseled, commanded, induced, or procured the violation of this Act, the Corporation Code, the General Banking Law, the Insurance Code, the SRC, or any related laws and any rules, regulations or orders thereunder;

v. Any person judicially declared to be insolvent, or incapacitated to contract; and

vi. Any person found guilty by a foreign court, regulatory authority or government agency of the acts or violations similar to any of the acts or misconduct enumerated in the foregoing paragraphs.

A conviction in the first instance shall be considered sufficient ground for disqualification.

8.17 Executive Compensation – The total annual compensation of all executive officers of the REIT shall not exceed such percentage of the net income before regular corporate income tax of the REIT during the immediately preceding taxable year, as may be provided in the IRR of this Act and shall be governed by the provisions on related party transactions.

8.18 Fund Manager and Property Manager Fees – Fees received by the REIT fund manager and the REIT property manager from the REIT shall not exceed one percent (1%) of the net asset value of the assets under management.

SEC. 9. *Reportorial and Disclosure Requirements.* –

9.1 Requirements – The REIT shall comply with the reportorial and disclosure requirements prescribed by the Corporation Code, the SRC and the Exchange. At the minimum, the REIT shall disclose the following information:

i. Material contracts as defined under Section 3 of this Act;

ii. Allowable investments of the REIT under Section 8.3 hereof;

iii. Related party transactions under Section 8.11 hereof;

iv. Contracts between the REIT and fund manager or the property manager, including the identity of the parties, contract price, fees and the other basic terms of the contract;

v. Valuation of the real estate properties of the REIT, including the valuation methodology used therefore;

vi. Material changes in the income stream of the REIT;

vii. Any fee received by any party relating to the acquisition or disposition of the real estate of the REIT;

viii. Merger, consolidation, joint venture, takeover or spin-off involving the REIT;

ix. Any modification of the rights of the holders of any class of securities issued by the REIT and the corresponding effect of such modification upon the rights of the holders;

x. Any declaration of cash dividend, stock dividend, property dividend and pre-emptive rights by the REIT;

xi. Appointment of a receiver or liquidator for the REIT;

xii. Change in control of the REIT;

xiii. Losses or potential losses which amount to at least five percent (5%) of the deposited property of the REIT;

xiv. Occurrence of any event of dissolution with details in respect thereto;

xv. Acts or facts that might seriously impair the business activities of the REIT;

xvi. Creation of mortgages, pledges or liens on the properties of the REIT;

xvii. Any development activity undertaken by the REIT, including the essential details thereof;

xviii. Direct and indirect ownership of directors and principal officers in the securities of the REIT;

xix. Any amendment to the articles of incorporation and bylaws of the REIT; and

xx. Any planned acquisition of outstanding shares or disposition of treasury shares of the REIT.

9.2 Special Quarterly and Annual Reports – In addition to the quarterly and annual reportorial and disclosure requirements prescribed for public and listed companies, the REIT shall make a report on and disclose the following to the Commission and the Exchange:

i. Summary of all real estate transactions entered into during the period, including the identity of the parties, the contract price, and their valuations, including the methods used to value the assets;

ii. Summary of all the REIT's real estate assets, including the location of such assets, their purchase prices and the latest valuations, rentals received and occupancy rates, and/or the remaining terms of the REIT's leasehold properties;

iii. Comparative summary of the financial performance of the REIT covering various time periods (e.g. quarterly, one (1)-year, three (3)-year, five (5)-year or (10)-year).

9.3 REIT Plan – The REIT plan or prospectus shall comply with the requirements of the SRC and disclose the risks specific to investing in REITs.

9.4 Failure of Compliance – Failure to comply with reportorial and disclosure requirements shall subject the REIT to the applicable penalties under the SRC and the rules of the Exchange, without prejudice to the filing of the appropriate administrative, civil or criminal action under this Act or existing laws.

ARTICLE III

TAXES AND OTHER RELATED ISSUES

SEC. 10. *Income Taxation of REITs.* – A REIT shall be subject to income tax under Chapter IV, Title II of the National Internal Revenue Code of 1997, as amended, on its taxable net income as defined in this Act: *Provided*, That in no case shall a REIT be subject to the minimum corporate income tax, as provided under Section 27(E) and Section 28(A)(2) of the same Code: *Provided, further*, That for purposes of computing the taxable net income of a REIT, dividends distributed by a REIT from its distributable income after the close of a taxable year and on or before the last day of the fifth (5th) month following the close of the taxable year shall be considered as paid on the last day of such taxable year.

A REIT shall be subject to the income tax on its taxable net income as defined in Chapter V, Title II of the National Internal Revenue Code of 1997, as amended, instead of its taxable net income as defined in this Act, upon the occurrence of any of the following events subject to such curing period as may be prescribed in the IRR of this Act:

i. Failure to maintain its status as a public company as defined in Section 8.1 of this Act;

ii. Failure to maintain the listed status of the investor securities on the Exchange and the registration of the investor securities by the Commission; and/or

iii. Failure to distribute at least ninety percent (90%) of its distributable income required under Section 7 of this Act.

SEC. 11. *Creditable Withholding Tax.* – Income payments to a REIT shall be subject to a lower creditable withholding tax of one percent (1%).

SEC. 12. *Transfer of Real Property.* – Any existing law to the contrary notwithstanding, the sale or transfer of real property to REITs, which includes the sale or transfer of any and all security interest thereto, shall be subject to fifty percent (50%) of the applicable Documentary Stamp Tax (DST) imposed under Title VII of the National Internal Revenue Code of 1997, as amended.

All applicable registration and annotation fees to be paid, related or incidental to the transfer of assets or the security interest thereto, shall be fifty percent (50%) of the applicable registration and annotation fees.

The incentives granted under this section can be availed of by an unlisted REIT, provided it is listed with an Exchange not later than two (2) years from the date of the initial availment of the incentives.

The fifty percent (50%) of the applicable DST shall nevertheless be due and demandable together with the applicable surcharge, penalties, and interest thereon reckoned from the date such taxes should have been paid upon the occurrence of any of the following events subject to such curing period as may be prescribed in the IRR of this Act:

i. Failure to list with an Exchange within the period prescribed in this section;

ii. Failure to maintain its status as a public company as defined in Section 8.1 of this Act;

iii. Failure to maintain the listed status of the investor securities on the Exchange and the registration of the investor securities by the Commission; and/or

iv. Failure to distribute at least ninety percent (90%) of its distributable income required under Section 7 of this Act.

SEC. 13. *Issuance and Transfer of Investor Securities.*

– The following rules shall apply:

i. The original issuance of investor securities shall be subject to DST under Title VII of the National Internal Revenue Code of 1997, as amended;

ii. Any sale, barter, exchange or other disposition of listed investor securities through the Exchange, including block sales or cross sales with prior approval from the Exchange, shall be subject to the stock transaction tax imposed under Section 127(a) of the National Internal Revenue Code of 1997, as amended;

iii. Any sale, barter or exchange or other disposition of listed investor securities through the Exchange, including block sales or cross sales with prior approval from the Exchange, shall be exempt from the DST prescribed under Title VII of the National Internal Revenue Code of 1997, as amended; and

iv. Any initial public offering and secondary offering of investor securities shall be exempt from the tax imposed under Section 127(b) of the National Internal Revenue Code of 1997, as amended.

SEC. 14. *Dividends Paid by REITs.* – Cash or property dividends paid by a REIT shall be subject to a final tax of ten percent (10%), unless: (a) the dividends are received by a nonresident alien individual or a nonresident foreign corporation entitled to claim a preferential withholding tax rate of less than ten percent (10%) pursuant to an applicable tax treaty; or (b) the dividends are received by a domestic corporation or resident foreign corporation, or an overseas Filipino investor in which case, they are exempt from income tax or any withholding tax: *Provided*, That in the case of overseas Filipino investors, they are exempt from the dividends tax for seven (7) years from the effectivity of the tax regulations implementing this Act.

SEC. 15. *VAT on Gross Sales or Gross Receipts of REITs.* – A REIT shall be subject to value-added tax (VAT) imposed under Title IV of the National Internal Revenue Code of 1997, as amended, on its gross sales from any disposal of real property, and on its gross receipts from the rental of such real property. A REIT shall not be considered as a dealer in securities and shall not be subject to VAT on its sale, exchange or transfer of securities forming part of its real estate-related assets.

SEC. 16. *General Application of the National Internal Revenue Code of 1997, as amended.* – Unless otherwise provided under this Act, the internal revenue taxes under the National Internal Revenue Code of 1997, as amended, shall apply.

SEC. 17. *Delisting of REITs.* – In the event the REIT is delisted from the Exchange, whether voluntarily or involuntarily, for failure to comply with the provisions of this Act or rules of the Exchange, the tax incentives granted under this Act shall be *ipso facto* revoked and withdrawn as of the date the delisting becomes final and executory and any tax incentives that may have been availed of by the REIT thereafter shall immediately be refunded to the Government and the surcharge and penalty prescribed by Section 19 hereof shall apply. If the delisting is for causes highly prejudicial to the interest of the investing public such as violation of the disclosure and related party provisions of this Act or insolvency of the REIT due to mismanagement or misappropriation, conversion, wastage or dissipation of its corporate assets, the responsible persons shall refund to its investors at the time of final delisting the value of their shares.

ARTICLE IV

PENAL PROVISIONS

SEC. 18. *Revocation of Registration.* – If the Commission finds out that the REIT was established so as to seek the benefits of this Act without a true intention to carry out its provisions and/or the IRR, the Commission shall revoke or cancel the registration of the securities of the REIT. The REIT shall pay the applicable taxes plus interests and

surcharges under the National Internal Revenue Code of 1997, as amended.

SEC. 19. *Penalties.* – A fine of not less than Two hundred thousand pesos (Php200,000.00) nor more than Five million pesos (Php5,000,000.00) or imprisonment of not less than six (6) years and one (1) day nor more than twenty-one (21) years, or both at the discretion of the court, shall be imposed upon any person, association, partnership or corporation, its officer, employee or agent, who, acting alone or in connivance with others, shall:

i. Understate or overstate the financial statements of the REIT;

ii. Cause any loss, conversion, misappropriation of the assets, securities or income of the REIT;

iii. Use another person to hold the legal title of the shares of the REIT for his benefit for the purpose of circumventing the minimum public ownership prescribed in Section 8.1 of this Act;

iv. Allow himself to be used by another person to hold legal title to the shares of the REIT for the purpose of circumventing the minimum public ownership prescribed in Section 8.1 of this Act;

v. Submit false or misleading certification on the minimum public ownership required by this Act; or

vi. Violate any of the provisions of this Act, or the rules and regulations promulgated under authority hereof.

If the offender is a corporation, partnership or association or other juridical entity, the penalty may, at the discretion of the court, be imposed upon such juridical entity and/or upon the officer or officers of the corporation, partnership, association or entity responsible for the violation, and if such officer is an alien, he shall in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

The prosecution and conviction of the offender under this Act and the imposition of the above penalties shall be without prejudice to the administrative, civil and criminal liabilities of the offender under the SRC.

ARTICLE V

MISCELLANEOUS PROVISIONS

SEC. 20. *Corporate Governance.* – The REIT property manager and the REIT fund manager shall be subject to the principles of corporate governance adopted by the proper regulatory body.

SEC. 21. *Use of Registration Fees.* – To carry out the purposes of this Act, the Commission shall retain and use fifty percent (50%) of all fees paid to it relative to the establishment of REITs and the registration of their securities in addition to its annual budget.

SEC. 22. *Implementing Rules and Regulations.* – Within ninety (90) days from the effectivity of this Act, the Commission, in coordination with the Bangko Sentral ng Pilipinas (BSP) and the Department of Finance (DOF) and in consultation with other stakeholders such as the Philippine Stock Exchange and the real estate industry, shall promulgate the implementing rules and regulations of the provisions of this Act: *Provided*, That the Commission, the BSP and the DOF may continue to issue separate regulations that will apply exclusively to the institutions under their respective jurisdiction, consistent with the implementing rules and regulations: *Provided, further*, That the Commissioner of the Bureau of Internal Revenue shall issue the IRR regarding all tax provisions of this Act (Tax Regulations), subject to the review of the Secretary of Finance, in accordance with Section 4 of the National Internal Revenue Code, as amended, after full and complete consultation with all sectors concerned.

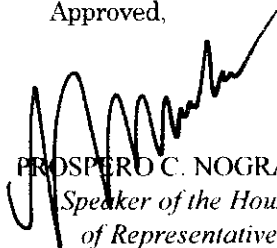
SEC. 23. *Separability Clause.* – If, for any reason, any article or provision of this Act or any portion thereof or application of such article, provision or portion thereof to any person, group or circumstance is declared invalid or

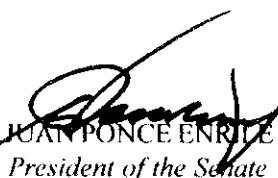
unconstitutional, the remainder of this Act shall not be affected by such decision.

SEC. 24. *Repealing Clause.* – All laws, executive orders, rules and regulations and parts thereof which are inconsistent with this Act are hereby repealed or amended accordingly.

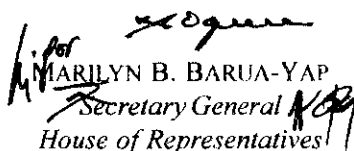
SEC. 25. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its complete publication in the *Official Gazette* or in at least two (2) newspapers of general circulation in the Philippines.

Approved,


PROSPERO C. NOGRALES
*Speaker of the House
of Representatives*


JUAN PONCE ENRILE
President of the Senate

This Act which is a consolidation of Senate Bill No. 2639 and House Bill No. 6379 was finally approved by the Senate and the House of Representatives on September 29, 2009 and September 30, 2009, respectively.


MARILYN B. BARUA-YAP
*Secretary General
House of Representatives*


EMMA MIRIO-REYES
Secretary of the Senate

Approved:

GLORIA MACAPAGAL-ARROYO
President of the Philippines

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Lapsed into law without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution