



Securities and
Exchange
Commission
PHILIPPINES

LAUNCHING OF THE

REIT

REAL ESTATE INVESTMENT TRUST

REGULATIONS

Key Events

Republic Act No. 9856, otherwise known as the Real Estate Investment Trust (REIT) Act of 2009, established the legal and regulatory framework and provided an enabling market environment for the development of Philippine REITs.

The REIT Act was one of the landmark pieces of legislation approved during the 14th Congress. The main purpose of the REIT Law is to allow both small and large investors to participate in the direct ownership of real estate. It is an alternative investment instrument to foreign investors as well as OFWs. It also provides real estate companies a cheaper source of capital while promoting economic development, growth in tourism and liquidity in the capital markets.

Since its enactment, however, no REIT has taken off. The big players in the real estate industry found unacceptable the public ownership level prescribed through an amendment of the implementing rules and regulations (IRR) of the REIT Act, along with the application of the 12% value-added (VAT) tax on the transfer of properties to REITs, as provided through Revenue Regulations No. 13-2011.

Under the Duterte administration, the Department of Finance (DOF) supported the easing of the restrictive ownership and taxation requirements. On January 20, 2020, the Securities and Exchange Commission (SEC) and the Bureau of Internal Revenue (BIR) issued new regulations on the taxability of REITs, as well as amendments to the REIT IRR.

- **July 2007**
The REIT Bill was filed at the House of Representatives.
- **29 & 30 September 2009**
The House of Representatives and Senate respectively approved the REIT Act.
- **17 December 2009**
The REIT Act lapsed into law, in accordance with Article VI, Section 27 (1) of the 1986 Philippine Constitution.
- **31 May 2010**
The SEC issued the REIT IRR.
- **27 April 2011**
The SEC amended the REIT IRR to provide that the public ownership in a REIT shall be at least 40% of the outstanding capital stock on the first year and shall be increased to 67% by the third year.
- **25 July 2011**
The BIR issued RR 13-2011, imposing a 12% VAT on the transfer of properties to REITs.
- **20 January 2020**
The SEC and BIR relaxed the ownership requirements and tax treatment of REITs, among others.

Understanding Philippine REITs

What is a REIT?

A real estate investment trust (REIT) is a stock corporation established principally for the purpose of owning income-generating real estate assets such as apartment buildings, office buildings, medical facilities, hospitals, hotels, resorts, highways, warehouses, shopping centers, railroads, among others. It is a type of investment instrument that provides a return to investors derived from rental income of the underlying real estate asset.

What are the key requirements?

- A REIT must be registered with the SEC as a stock corporation with a minimum paid-up capital of P300 million.
- A REIT must be listed with an Exchange and, upon listing, have at least 1,000 Public shareholders each owning at the minimum 50 shares and which, in the aggregate, own at least 1/3 of the outstanding capital stock of the REIT.
- At least one-third or two, whichever is higher, of the board of directors shall be independent directors.
- A REIT must appoint an independent Fund Manager and Property Manager.
- Directors, officers, fund managers, property managers, distributors and other REIT participants must qualify under the fit and proper rule.

Is a REIT operated and regulated like a trust?

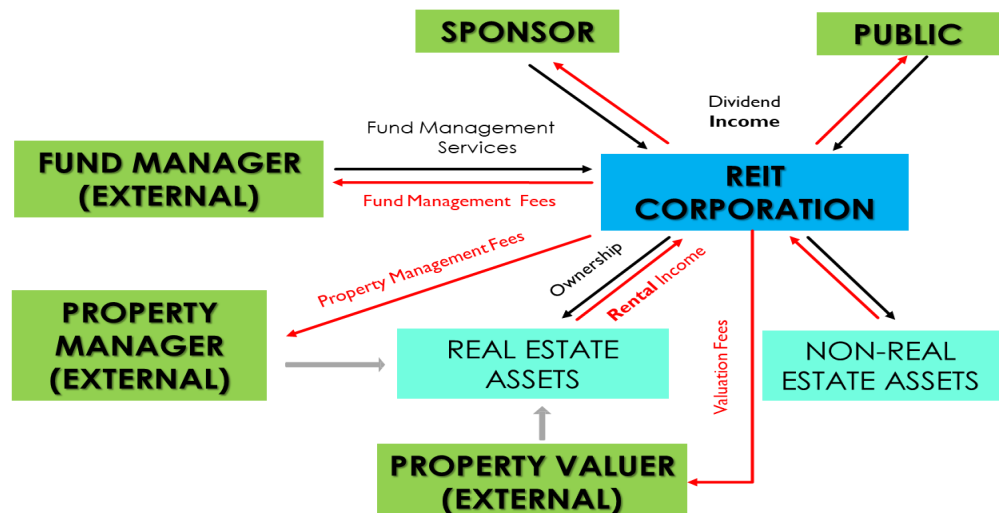
A REIT does not have the same technical meaning as “trust” under existing laws and regulations. The term is used in the REIT Act for the sole purpose of adopting the internationally accepted description of the company in accordance with global best practices.

Does the PSE track record requirement apply to a newly formed REIT?

Yes, provided that it is backed up by historical record of operating asset put into the REIT. In addition, the real estate to be acquired by the REIT should have a good track record for three 3 years from date of acquisition.

REIT Structure

under R.A. 9856



* illustration adapted from
Leechiu Management Presentation

What is an income-generating real estate asset?

It is a real property which is held for the purpose of generating a regular stream of income such as, but not limited to, rentals, toll fees, user's fees, ticket sales, parking fees, storage fees and the like, as may be further defined and identified by the SEC.

The income-generating real estate asset may come from a sponsor/promoter, or any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, contributed cash or property in establishing a REIT.

What is a deposited property?

It is the total value of the REIT's assets reflecting the fair market value of total assets held by the REIT.

What are the allowable investments of the REIT?

At least 75% of the deposited property of the REIT shall be invested in, or consist of, **income-generating real estate**.

At least 35% of deposited property shall be invested in income-generating real estate **located in the Philippines**.

An investment in real estate may be by way of direct ownership or a shareholding in a domestic special purpose vehicle constituted to hold/own real estate, subject to the conditions provided under the IRR.

Acquisition of a real estate shall include the ownership of all rights, interests and benefits related to the ownership of the real estate. The real estate to be acquired by the REIT should have a good track record for three years from date of acquisition.

For the complete list, see Rule 5– Allowable Investments of the REIT of the IRR.

Can a Philippine REIT own foreign real estate property?

Yes, provided that such investment does not exceed 40% of the REIT's deposited property and only upon special authority from the SEC.

What are the incentives for a company to become a REIT sponsor/promoter?

It provides real estate companies a cheaper source of capital by transferring their income-generating real estate assets into a REIT and, in the process, raising fresh funds for more projects.

Are transfers of properties to a REIT subject to VAT?

The Tax Reform for Acceleration and Inclusion (TRAIN) effectively exempted from the 12% VAT the transfer of property to a REIT in exchange for its shares, provided the exchange should result in an acquisition by the transferor of at least 51% of the outstanding voting capital stocks of the transferee. The exemption was reiterated under the Revenue Regulations issued by the BIR on January 20, 2020 to amend RR No. 13-2011, which had imposed the 12% VAT on the transfer of properties to REITs.

What projects can a REIT sponsor/promoter undertake?

A REIT sponsor or promoter must reinvest in any real estate, including any redevelopment thereof, and/or infrastructure projects in the Philippines the following:

- 1.any proceeds realized by the Sponsor/Promoter from the sale of REIT shares or other securities issued in exchange for income-generating Real Estate transferred to the REIT; and
- 2.any money raised by the Sponsor/Promoter from the sale of any of its income-generating Real Estate to the REIT.

The Reinvestment Requirement was introduced following the declaration in the REIT Act that REITs shall assist the State in achieving its policy of:

1. promoting the development of the capital market;
2. democratizing wealth by broadening the participation of Filipinos in the ownership of real estate in the Philippines; and
3. using the capital market as an instrument to help finance and develop infrastructure projects.

What are infrastructure projects?

R.A. No. 6975, as amended by R.A. No. 7718, and the Constructors' Performance Evaluation System Implementing Guidelines for Infrastructure Projects define an infrastructure project as construction, improvement or rehabilitation of roads and highways, airports and air navigation facilities, railways, ports, flood control and drainage, water supply and sewerage, irrigation systems, dams, buildings, communication facilities, dredging and reclamation, power generating plants, power transmission and distribution facilities and other related construction projects.

What is a REIT fund manager?

Among others, a fund manager:

1. Implements the investment strategies of the REIT by determining the allocation of the deposited property to the allowable investment outlets and selecting income-generating real estate;
2. Oversees and coordinates property acquisition, leasing, operating and financial reporting, appraisals, audits, market review, accounting and reporting procedures, and refinancing and asset disposition plans; and
3. Causes a valuation of any of the real estate and other properties of the REIT to be carried out by the property valuer.

What is a REIT property manager?

Among others, a property manager:

1. Plans the tenant mix and identifies potential tenants;
2. Formulates and implements leasing strategies;
3. Enforces tenancy conditions;
4. Ensures compliance with government regulations in respect of the real estate under management;
5. Secures and administers routine management services, including security control, fire precautions, communication systems and emergency management;
6. Maintains and manages the physical structures/ real properties; and
7. Formulates and implements policies and programs in respect of building management, maintenance and improvement.

** See Rules 6 and 7 of the Revised IRR for the qualifications and requirements of fund and property managers.*

How can one invest in a REIT?

Investment in a 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 SEC.

What are the benefits of investing in a REIT?

The purchase of shares of stock of REITs allows investors, especially small or retail investors, to participate in the ownership of one or more income-generating real estate.

As an investment, REITs attract many investors due to the following benefits they offer:

Dividends - as mandated by law, investors can expect to receive annually 90% of distributable income as dividends

Liquidity - investors can easily purchase and dispose of REIT shares, which are readily convertible to cash

Diversification - REITs allow investors to invest in a portfolio of different properties, locations and property types at a fraction of their cost

Transparency - REITs will be subject to increased disclosure requirements, thereby generating more transparency and lessening perceived risk

What are the protections afforded to investors?

The REIT Act, together with its IRR, has rules on minimum public ownership, conflict of interest, related party transaction, limitations on compensation and fees paid by a REIT, restrictions on investment activity of a REIT, fit and proper rule and rules on oversight of independent directors.

For instance, one of the amendments to the REIT IRR requires the creation of a related party transactions committee. Majority of the committee members must be independent directors who shall vote unanimously in approving related party transactions.

The REIT will also have to comply with SEC Memorandum Circular No. 10, Series of 2019, which provides the Rules on Material Related Party Transactions for Publicly-Listed Companies.

SEC Memorandum Circular No. 10, Series of 2019 requires publicly listed companies to disclose their respective policies on material related party transactions and report such dealings within three days from their execution, among others.

As a listed company, the REIT will also be subject to the stringent rules of SEC and the Disclosure Rules of PSE. Sanctions are in place for violations of the applicable laws, rules and regulations.



The Revised Implementing Rules and Regulations of Republic Act No. 9856, or the Real Estate Investment Trust Act , as provided in SEC Memorandum Circular No. 1, Series of 2020, is available on the SEC website. Scan the QR Code or follow the link below:

<http://www.sec.gov.ph/public-information-2/sec-issuances/securities-and-exchange-2/commission-memorandum-circulars/by-year/>