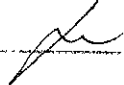


14TH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

8 SEP 24 2008

SENATE BILL NO. 2639

RECEIVED BY: 

Prepared by the Committees on Banks, Financial Institutions and Currencies and Ways and Means in substitution of Senate Bill No. 63

**AN ACT
PROVIDING THE REGULATORY FRAMEWORK FOR REAL ESTATE
INVESTMENT COMPANIES AND FOR OTHER PURPOSES**

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

**ARTICLE I
GENERAL PROVISIONS**

1 **SECTION 1. *Short Title.*** – This Act shall be known as “*The Real Estate*
2 *Investment Company Act of 2008.*”

3
4 **SEC. 2. *Declaration of Policy.*** – It is the policy of the State to promote
5 the development of the capital market, broaden the participation of Filipinos in
6 the ownership of real estate in the Philippines, use the capital market as an
7 instrument to help finance and develop infrastructure projects, and protect the
8 investing public by providing an enabling regulatory framework and environment
9 for real estate investment companies.

10
11 **SEC. 3. *Definition of Terms.*** – For the purposes of this Act, the term:

- 12
13 a. “Associate” of a director or officer includes:
14
15 i. Any member of the director’s immediate family (*i.e.*, parent,
16 spouse, child, stepchild, brother or sister, by consanguinity
17 or affinity); and
18

1 ii. Any company in which he/she and his/her immediate family
2 together, directly or indirectly, have an interest of twenty-five
3 (25%) percent or more.
4

5 b. **“Cash Equivalent Items”** means instruments or investments that
6 are highly liquid and marketable and are considered good as cash
7 as determined in accordance with the rules and regulations
8 prescribed by the Commission.
9

10 c. **“Commission” or “SEC”** means the Securities and Exchange
11 Commission of the Philippines.
12

13 d. **“Constitutive Documents”** means the Articles of Incorporation
14 and by-laws of a REIC.
15

16 e. **“Deposited Property”** means the total value of the REIC’s assets
17 based on the latest valuation determined in accordance with the
18 rules and regulations promulgated by the Commission.
19

20 f. **“Distributable Income”** means net income as adjusted for
21 unrealized gains and losses/expenses and impairment losses, as
22 prescribed by the Commission.
23

24 g. **“Exchange”** means any entity registered with the Commission as
25 an exchange pursuant to the Securities Regulation Code.
26

27 h. **“Independent Director”** means a director who has the
28 qualifications and none of the disqualifications specified in the
29 Securities Regulation Code and its implementing rules and
30 regulations.
31

32 i. **“Interested Party”** includes:
33

34 i. The sponsor/promoter of the REIC;

35
36 ii. The REIC Property and Fund Managers;
37

1 iii. The adviser or consultant of the REIC, sponsor/promoter,
2 Property and Fund Managers of the REIC;

3
4 iv. A director or officer of (i) the sponsor/promoter of the REIC,
5 or (ii) the REIC Property and Fund Managers; and the
6 adviser or Associate of any such director; or

7
8 v. A related corporation, partnership or party as may be defined
9 by the Commission.

10
11 j. **“Investor”** means the owner of Investor Securities or Investor
12 Shares.

13
14 k. **“Investor Securities” or “Investor Shares”** means shares of
15 stock issued by a REIC or derivatives thereof.

16
17 l. **“Net Asset Value” or “NAV”** means the total assets less total
18 liabilities as determined by the Implementing Rules and
19 Regulations (IRR) of the Commission.

20
21 m. **“Net Income”** means net income as determined under the
22 Philippine Financial Reporting Standards (PFRS).

23
24 n. **“Overseas Filipino Investor”** refers to an individual citizen of the
25 Philippines who is working or who has worked abroad, including
26 one who is retained or re-acquired his Philippine citizenship under
27 Republic Act No. 9225, otherwise known as the “Citizenship
28 Retention and Re-acquisition Act of 2003”.

29
30 o. **“Real Estate Investment Company” or “REIC”** is the legal
31 vehicle established for the sole purpose of allowing small and large
32 investors alike to participate in the ownership of income-producing
33 real estate assets and real estate-related assets. Unless otherwise
34 provided by the applicable law, a REIC shall be a stock corporation
35 established in accordance with the Corporation Code of the
36 Philippines and listed in an Exchange in accordance with its listing
37 rules.
38

- 1 p. **“Real Property”** shall have the same definition as “Immovable
2 Property” under Article 415 of the New Civil Code of the
3 Philippines.
4
- 5 q. **“Real Estate-Related Assets”** shall mean:
6
- 7 i. Debt securities and shares issued by listed property
8 companies; or
 - 9
 - 10 ii. Other funds and assets, including personal property,
11 incidental to the ownership of real estate comprising the
12 REIC.
13
- 14 r. **“REIC Plan”** means the plan, including any amendments of the
15 REIC registered with the Commission in accordance with its IRR.
16
- 17 s. **“REIC Property Manager”** shall mean the independent
18 professional administrator of real properties who is engaged by the
19 REIC to provide property management services, lease management
20 services, marketing services, project management services and
21 other similar services pertaining to property administration.
22
- 23 t. **“Taxable Net Income”** means the pertinent items of gross income
24 specified in Section 32, less all allowable deductions enumerated
25 in Section 34, of the National Internal Revenue Code of 1997, as
26 amended, less the dividends distributed by a REIC out of its
27 Distributable Income as of the end of the taxable year as: (a)
28 dividends to owners of the common shares; and (b) dividends to
29 owners of the preferred shares pursuant to their rights and
30 limitations specified in the Articles of Incorporation of the REIC.
31
32

33 **ARTICLE II**
34 **REAL ESTATE INVESTMENT COMPANY**
35
36

1 **SEC. 4. *Investment in the REIC.*** – Investment in a REIC shall be by way
2 of subscription to or purchase of Investor Securities.

3
4 No Investor Securities shall be offered for subscription or sale except in
5 accordance with a REIC Plan and other requirements and restrictions as may be
6 prescribed by the Commission.

7
8 **SEC. 5. *Listing.*** – The Investor Securities must be registered with the
9 Commission and listed in accordance with the rules of the Exchange.

10
11 **SEC. 6. *Nationality Requirement.*** – A REIC that owns land must comply
12 with foreign ownership limitations imposed under Philippine law.

13
14 **SEC. 7. *Dividend Distribution.*** – A REIC must distribute annually at least
15 ninety percent (90%) of its Distributable Income to its Investors. However, this
16 excludes income on the sale of the REIC's assets that are re-invested by the
17 REIC within one (1) year from the date of the sale.

18
19 **SEC. 8. *Requirements.*** – Unless the Commission provides otherwise
20 taking into account public interest, the need to protect investors and develop the
21 country's real estate investment industry to make it globally competitive:

22
23 8.1. **Minimum Public Ownership** - A REIC must, at all times, be a
24 public company and to be considered as such, the REIC must,
25 upon and after listing, (a) have at least one thousand (1,000)
26 shareholders each owning at least one hundred (100) shares of a
27 class of shares who in the aggregate own at least thirty percent
28 (30%) of the outstanding capital stock of the REIC, and (b) must not
29 be considered a closely-held corporation under Section 127(B) of
30 the National Internal Revenue Code of 1997, as amended.

31 8.2. **Minimum Capital** - A REIC must have a minimum paid-up capital of
32 One Hundred Million Pesos (PHP 100,000,000.00) at the time of its
33 registration.

34

1 8.3 **Allowable Investments** - Subject to the requirements and
2 restrictions prescribed in this Act, a REIC may only invest in:

- 3
- 4 a. Income-producing Real Property, whether freehold or
5 leasehold. An investment in Real Property may be by way of
6 direct ownership or a shareholding in an unlisted special
7 purpose vehicle constituted to hold or own Real Property;
8
- 9 b. Real Estate-Related Assets, wherever the issuers, assets, or
10 securities are incorporated, located, issued, or traded;
11
- 12 c. Managed funds, debt securities and shares issued by listed
13 local or foreign non-property corporations;
14
- 15 d. Government securities issued on behalf of the Philippine
16 Government, governments of other countries and securities
17 issued by supra-national agencies;
18
- 19 e. Cash and Cash Equivalent Items; and
20
- 21 f. Such other investment outlets as the Commission may allow.
22

23 8.4 **Income-Producing Real Property** - At least seventy-five percent
24 (75%) of the Deposited Property of the REIC must be invested in,
25 or consist of, income-producing Real Property located in the
26 Philippines.
27

28 8.5 **Property Development** - A REIC must not undertake property
29 development activities whether on its own, in a joint venture with
30 others, or by investing in unlisted property development companies,
31 unless it intends to hold the developed property upon completion.
32 The total contract value of property development activities
33 undertaken and investments in uncompleted property
34 developments should not exceed ten percent (10%) of its
35 Deposited Property.
36

37 8.6 **Single Entity Limit** - Not more than twenty percent (20%) of the
38 Deposited Property of the REIC shall be invested in any single

1 issuer's securities, whether listed or unlisted, or in any single
2 managed fund.

3
4 8.7 **Foreign Assets** – A REIC may invest in local or foreign assets,
5 subject to the terms of its Constitutive Documents and the legal
6 requirements of the foreign country.

7
8 8.8 **Aggregate Leverage Limit** – The total borrowings and deferred
9 payments of a REIC shall not exceed thirty-five percent (35%) of its
10 Deposited Property: *Provided*, however, That the total borrowings
11 and deferred payments of a REIC that has a publicly disclosed
12 investment grade credit rating by a duly accredited or internationally
13 recognized rating agency may exceed thirty-five percent (35%) but
14 not more than seventy percent (70%) of its Deposited Property.

15
16 8.9 **Interested Party Transactions** – Any material contract between
17 the REIC and Interested Parties, including contracts involving the
18 acquisition or lease of assets, must comply with the following
19 requirements:

- 20
21 a. Full, fair, timely and accurate disclosures on the identity of
22 the parties and other important details of the transaction
23 have been made to the Exchange and the Commission;
24
25 b. Be on fair and reasonable terms, including the contract price;
26
27 c. Approved by at least a majority of the entire membership of
28 the board of directors including the unanimous vote of all
29 independent directors of the REIC; and
30
31 d. Accompanied by a fairness opinion by an independent
32 appraiser done in accordance with the valuation
33 methodology prescribed by the Commission, in the case of
34 an acquisition or disposition of assets.

35
36 8.10 **Valuation** – A full valuation of a REIC's assets must be conducted
37 by an independent appraisal company, duly accredited by the
38 Commission, at least once a year in accordance with the applicable

1 rules of asset valuation and valuation methodology prescribed by
2 the Commission.

3
4 8.11 **Fund Manager** - A REIC must appoint an independent Fund
5 Manager who shall be responsible for managing the funds of the
6 REIC. The Fund Manager shall be appointed in accordance with,
7 and perform duties and functions and subject to such requirements
8 and restrictions as may be prescribed by, the rules and regulations
9 of the Commission. The following are the minimum qualifications of
10 a REIC Fund Manager:

- 11
- 12 a. It must be a corporation duly licensed to do business in the
13 Philippines;
 - 14
 - 15 b. It must have a minimum paid-up capital stock or assigned
16 capital of Ten Million Pesos (PHP10,000,000.00), unless the
17 Commission provides otherwise;
 - 18
 - 19 c. Its office in the Philippines must have a meaningful role in its
20 business activities and must perform accounting, compliance
21 and investor relations services in the Philippines;
 - 22
 - 23 d. It must employ a resident chief executive officer and at least
24 two (2) full-time professional employees who have a proven
25 track record in fund management and experience in the real
26 estate industry ; and
 - 27
 - 28 e. It must not have a conflict of interest as defined in the
29 implementing rules and regulations of this Act.
 - 30

31 8.12. **REIC Property Manager** – The REIC must appoint a REIC
32 Property Manager who shall be responsible for managing the real
33 estate assets such as apartment buildings, office buildings,
34 warehouses, hospital buildings, medical facilities, hotel buildings,
35 resort facilities, manufacturing plants and other physical assets of
36 the REIC. The contract between the REIC and the Property
37 Manager must be: (a) approved by a majority of the entire
38 membership of Board of the REIC, including all the independent

1 directors of the REIC; (b) on arms-length basis and its terms are
2 fair and reasonable to the REIC; and (c) promptly disclosed to the
3 Exchange and the Commission.

4
5 The REIC Property Manager shall possess the qualifications and
6 be subject to such functions and responsibilities, restrictions and
7 other requirements prescribed by the Commission.

8
9 8.13. **Independent Directors** - At least one-third (1/3) of the board of
10 directors of a REIC must be independent directors.

11
12 8.14. **Fit and Proper Rule** - To maintain the quality of management of
13 the REIC and afford better protection to REIC Investors, the
14 Commission together with other concerned regulatory agencies,
15 shall prescribe or pass upon and review the qualifications and
16 disqualifications of individuals elected or appointed as directors or
17 officers of the REIC, REIC Fund Managers, REIC Property
18 Managers, distributors and other REIC participants and disqualify
19 those found unfit. The appropriate regulatory agency may
20 disqualify, suspend or remove any director or officer who commits
21 or omits an act which renders him unfit for the position.

22
23 In determining whether an individual is fit and proper to hold the
24 position, regard shall be given to his integrity, experience,
25 education, training, and competence: *Provided*, however, That the
26 following persons shall in no case be allowed to serve or act in the
27 capacity of officer, director, consultant, of any REIC Fund Manager,
28 REIC Property Manager, Trustee, and distributor:

29
30 a. Any person convicted of any crime involving any security or
31 financial product;

32
33 b. Any person convicted of an offense involving fraud or
34 embezzlement, theft, estafa or other fraudulent acts or
35 transactions;

36
37 c. Any person who, by reason of any misconduct, is enjoined
38 by order, judgment, or decree by any court, quasi-judicial

1 body or administrative agency of competent jurisdiction from
2 acting as a director, officer, employee, consultant, or agent
3 occupying any fiduciary position;
4

5 d. Any person found by the appropriate regulatory agency to
6 have violated, or aided, abetted, counseled, commanded,
7 induced, or procured the violation of this Act, the Corporation
8 Code, General Banking Law, the Insurance Code, the
9 Securities Regulation Code, or any related laws and any
10 rules, regulations or orders thereunder;
11

12 e. Any person judicially declared to be insolvent, or
13 incapacitated to contract; and
14

15 f. Any person found guilty by a foreign court, regulatory
16 authority or government agency of the acts or violations
17 similar to any of the acts or misconduct enumerated in the
18 foregoing paragraphs.
19

20 A conviction in the first instance shall be considered sufficient
21 ground for disqualification.
22

23 ARTICLE III

24 TAXES AND OTHER RELATED ISSUES

25

26 **SEC.9. *Income Taxation of REICs.*** – A REIC shall be subject to income
27 tax under Chapter IV, Title II of the National Internal Revenue Code of 1997 as
28 amended, on its Taxable Net Income as defined in this Act: *Provided*, however,
29 That REICs that are listed within three (3) years from the effectivity of the IRR of
30 this Act and that qualify as a public company pursuant to Section 8.1 hereof shall
31 be subject to income tax at the rate of twenty-five percent (25%) for a period of
32 seven (7) years from the date of listing in lieu of the income tax rates prescribed
33 by Title II of the National Internal Revenue Code of 1997, as amended. For
34 purposes of computing the Taxable Net Income of a REIC, dividends distributed
35 by a REIC from its Distributable Income after the close of a taxable year and on
36 or before the fifteenth day of the fourth month following the close of the taxable
37 year shall be considered as paid on the last day of such taxable year.
38

1 A REIC shall be subject to the income tax imposed under Title II of the
2 National Internal Revenue Code of 1997 as amended instead of the income tax
3 on its Taxable Net Income under this Act upon the occurrence of any of the
4 following events subject to such curing period as may be prescribed in the IRR of
5 this Act:

- 6
- 7 a. Failure to maintain its status as a public company as defined in
8 Section 8.1 of this Act;
 - 9
 - 10 b. Failure to maintain the listed status of the Investor Securities on the
11 Exchange and the registration of the Investor Securities by the
12 Commission; and/or
 - 13
 - 14 c. Failure to distribute at least ninety percent (90%) of its Distributable
15 Income required under Section 7 of this Act.
 - 16

17 **SEC. 10. *Transfer of Real Property.*** - Any existing law to the contrary
18 notwithstanding, the sale or transfer of Real Property to REICs, which includes
19 the sale or transfer of any and all security interest thereto, shall be subject to tax
20 as follows:

- 21
- 22 a. Exempt from Documentary Stamp Tax ("DST") imposed under Title
23 VII of the National Internal Revenue Code of 1997, as amended;
24 and
 - 25
 - 26 b. Exempt from Creditable Withholding Tax ("CWT") on the transfer of
27 ordinary assets, imposed under Title II of the National Internal
28 Revenue Code of 1997 as amended, for a period of seven (7) years
29 from the date of effectivity of this Act.
 - 30

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

34

35 The incentives granted under this section can be availed of by an unlisted
36 REIC, provided it is listed with an Exchange within one (1) year from the date of
37 the availment of the incentives.

1 The DST and fifty percent (50%) of the applicable registration and
2 annotation fees shall nevertheless become due and demandable, together with
3 the applicable surcharge, penalties, and interest thereon reckoned from the date
4 such taxes and fees should have been paid if the transfer was not made
5 pursuant to the provisions of this Act, upon the occurrence of any of the following
6 events subject to such curing period as may be prescribed by in the IRR of this
7 Act:

- 8
- 9 a. Failure to list with an Exchange within the period prescribed in this
10 section;
 - 11
 - 12 b. Failure to maintain its status as a public company as defined in
13 Section 8.1 of this Act;
 - 14
 - 15 c. Failure to maintain the listed status of the Investor Securities on the
16 Exchange and the registration of the Investor Securities by the
17 Commission; and/or
 - 18
 - 19 d. Failure to distribute at least ninety percent (90%) of its Distributable
20 Income required under Section 7.
 - 21

22 **SEC. 11. Issuance and Transfer of Investor Securities.** - The following
23 rules shall apply:

- 24
- 25 a. The original issuance of Investor Securities shall be subject to DST
26 under Title VII of the National Internal Revenue Code of 1997 as
27 amended.
 - 28
 - 29 b. Any sale, barter, exchange or other disposition of listed Investor
30 Securities through the Exchange, including block sales or cross
31 sales with prior approval from the Exchange, shall be subject to the
32 stock transaction tax imposed under Section 127(A) of the National
33 Internal Revenue Code of 1997, as amended.
 - 34
 - 35 c. Any sale, barter or exchange or other disposition of listed Investor
36 Securities through the Exchange, including block sales or cross
37 sales with prior approval from the Exchange, shall be subject to
38 such DST as may be imposed under Title VII of the National

1 Internal Revenue Code of 1997, as amended, unless exemption for
2 such sale, barter, or exchange, or other disposition of listed
3 Investor Securities, including such block sales and cross sales, is
4 provided for the period prescribed by the applicable law.
5

- 6 d. Any initial public offering and secondary offering of Investor
7 Securities shall be exempt from the tax imposed under Section
8 127(B) of the National Internal Revenue Code of 1997, as
9 amended.
10

11 **SEC. 12. Dividends paid by REICs.** - Cash or Property Dividends Paid
12 by a REIC to its Investors shall be subject to income tax under Title II of the
13 National Internal Revenue Code of 1997, as amended, as follows:
14

- 15 a. If the Investor a Filipino citizen, a resident alien, a nonresident alien
16 whether or not engaged in trade or business in the Philippines, or a
17 nonresident foreign corporation (as these terms are defined in the
18 National Internal Revenue Code of 1997, as amended) the
19 dividends shall be subject to a final tax of ten percent (10%).
20

- 21 b. If the Investor is a domestic corporation, a resident foreign
22 corporation, or an Overseas Filipino Investor, the dividends shall be
23 exempt from income tax.
24

25 **SEC. 13. VAT on Gross Sales or Gross Receipts of REICs.** - A REIC
26 shall be subject to VAT imposed under Title IV of the National Internal Revenue
27 Code of 1997, as amended, on its Gross Sales from any disposal of Real
28 Property, and on its Gross Receipts from the rental of such Real Property. A
29 REIC shall not be considered as a dealer in securities and shall not be subject to
30 VAT on its sale, exchange, or transfer of securities forming part of its Real
31 Estate-Related Assets.
32

33 **SEC. 14. Delisting of REICs.** - In the event the REIC is delisted from the
34 Exchange, whether voluntarily or involuntarily, the tax incentives granted under
35 this Act shall be *ipso facto* revoked and withdrawn as of the date of delisting and
36 any tax incentives that may have been availed of by the REIC thereafter shall
37 immediately be refunded to the Government and the surcharge and penalty
38 prescribed by Section 15 hereof shall apply.

1
2
3 **ARTICLE IV**
4 **PENAL PROVISIONS**
5

6 **SEC. 15. *Withdrawal of Registration.*** - If the Commission finds that the
7 REIC was established so as to seek the benefits of this Act without a true
8 intention to carry it out as determined in accordance with the implementing rules
9 and regulations, the Commission shall withdraw or cancel the registration of the
10 securities of the REIC. The REIC shall pay the applicable taxes plus interests
11 and surcharges under the National Internal Revenue Code of 1997, as amended.
12

13 **SEC. 16. *Penalties.*** - (a) Any and all breach by the REIC Fund Manager
14 or the REIC Property Manager of the provisions of this Act and the rules and
15 regulations of the Commission shall be punishable by a penalty of revocation of
16 its license or corporate registration, as applicable, and a fine of not less than Two
17 Hundred Thousand Pesos (PHP200,000.00) and shall subject its officers and
18 employees responsible for such breach to a penalty of imprisonment for two (2)
19 years and a fine of not less than One Hundred Thousand Pesos
20 (PHP100,000.00).
21

22 (b) Any person who violates any of the provisions of this Act, or the
23 rules and regulations promulgated by the Commission under authority hereof, or
24 any person who, in a REIC Plan, registration statement, notice, or any
25 submission filed under this Act, makes any untrue statement of a material fact or
26 omits to state any material fact required to be stated therein or necessary to
27 make the statements therein not misleading, shall, upon conviction, suffer a fine
28 of not less than Fifty Thousand Pesos (PHP50,000.00) nor more than Five Million
29 Pesos (PHP5,000,000.00) or imprisonment of not less than six (6) years and one
30 (1) day nor more than twenty-one (21) years, or both in the discretion of the
31 court. If the offender is a corporation, partnership or association or other juridical
32 entity, the penalty may, in the discretion of the court, be imposed upon such
33 juridical entity upon the officer or officers of the corporation, partnership,
34 association or entity responsible for the violation, and if such officer is an alien,
35 he shall in addition to the penalties prescribed, be deported without further
36 proceedings after service of sentence.
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ARTICLE V
MISCELLANEOUS PROVISIONS

SEC. 17. Corporate Governance. - The REIC Property Manager and the REIC Fund Manager shall be subject to the principles of corporate governance adopted by the proper regulatory body.

SEC. 18. 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"), shall promulgate the implementing rules and regulations implementing the provisions of this Act: *Provided*, That the Commission, 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.

SEC. 19. 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. 20. Separability Clause. - If any provision or part hereof is declared invalid or unconstitutional, the remainder of this Act or provision thereof not otherwise affected shall remain valid and subsisting.

SEC. 21. 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: