

FOURTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

7 JUN 30 P1:12

SENATE

RECEIVED BY: 

S. B. No. 63

Introduced by SENATOR EDGARDO J. ANGARA


EXPLANATORY NOTE

The State recognizes the integral role of the private sector and its capital market towards achieving the Constitutional objective of equitably distributing and enhancing the democratization of wealth and the development of the Philippine economy as a whole towards the realization of the collective objective of achieving a Strong Republic.

Towards this end, the State seeks to promote the establishment of a legal and regulatory framework and the creation of a favorable market environment for real estate investment trusts. A "real estate investment trust" is a stock corporation formed for the sole purpose of investing in income-producing real estate assets. Income producing properties include apartment buildings, office buildings, warehouses, medical facilities, hospitals, mixed industrial/office buildings and other commercial and residential properties. In other jurisdictions, the real estate investment trust regime has also been used to help develop the tourism industry by building resorts, hotels, shopping centers, outlets as well as develop other infrastructure projects like highways, railroads, prisons, and other similar projects.

The main purpose of real estate investment trusts is to provide small and large investors alike with the opportunity to participate directly in the ownership and financing of large-scale real estate projects at affordable rates of investment, without the disadvantages of illiquidity, high transaction and management costs, as compared to traditional private real estate ownership. Since the stocks of real estate investment trusts should be listed in The Philippine Stock Exchange, Inc., it is easier to buy and sell the securities of said companies representing an interest in income-producing real estate than to directly buy and sell the properties themselves.

Among the advantages of owning shares in the real estate investment trust are as follows: allows the investing public to participate in large real estate projects; minimizes the risks of investment since the income-producing real estate assets are managed professionally by a real estate investment company manager; steady income stream to the investor and the national government since the real estate investment trust is required to declare dividends; and allows for cross-border investments that will encourage strategic foreign investments in the capital market.

Since the early 2000s, governments around the Asian region have been actively promoting real estate investment trusts within their respective countries by creating measures that are favorable and conducive to the development of said companies. The private sector responded positively and enthusiastically to these measures. Within a span of five (5) years, the number of real estate investment trusts in Asia grew from five (5) in 2001 to approximately eighty (80) in August 

2006. As of August 2006, total real estate investment trusts' market capitalization in Asia was estimated to be worth \$50 billion.¹ The recent success of said companies in Australia, Hong Kong, Japan and Singapore has encouraged industry participants and government authorities elsewhere in Asia to introduce similar vehicles or to refine existing structures to reinvigorate their local property markets and to improve investor access to property investments.²


Through the *"The Real Estate Investment Trust Act of 2007"*, real estate investment trusts shall be allowed to invest in real estate, whether freehold or leasehold, in or outside of the Philippines; real estate-related assets, listed or unlisted debt securities and listed shares of or issued by local or foreign non-property corporations; government securities issued on behalf of the Philippine Government or governments of other countries and cash and cash equivalent items. This legal framework is designed to provide a similar structure for investments in the real estate industry in the same manner that mutual funds provide for investment in stocks and securities.

For the purpose of protecting investors, the proposed legislation provides that real estate investment trusts should be listed in accordance with pertinent rules and regulations of The Philippine Stock Exchange, Inc., as well as the regulations of the Securities and Exchange Commission. Once listed, the real estate company will be subject to the stringent disclosure requirements applicable to all listed companies.

The proposed legislation exempts real estate investment trusts from income tax as well as documentary stamp tax, value-added tax and income tax on dividends under the National Internal Revenue Code of 1997, subject to listing and retention requirements. In return for the tax exemptions, real estate investment trusts must actually distribute at least ninety percent (90%) of their net income (loss) before extraordinary item, depreciation and amortization, or NIDA, (excluding income on the sale of a real estate investment trust's assets that are re-invested in real estate investment trust within a certain period from the date of the sale) as dividends to its shareholders.

In sum, the proposed measure on real estate investment trusts would not only allow the Philippines to participate in the globalization of the real estate investment markets, but, more importantly, contribute to the growth and development not only of the capital market but also the national economy through increased investment activities. Furthermore, the proposal effectively supports the growth of the BPO and tourism industry in the Philippines and will serve to attract foreign direct investments in real estate, thereby stimulating much-needed property and infrastructure development in the Philippines.

In view of the foregoing, the urgent passage of the proposed measure is requested.


EDGARDO J. ANGARA
Senator

¹ "Primer on REITS" by Qingru Li, August 9, 2006, p. 2.

² "Asian REITS: A New Dimension for Investors" by Philip Conner, April 2006, p. 5.

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

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

ARTICLE I

GENERAL PROVISIONS

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4 SECTION 1. *Short Title.* – This Act shall be known as “*The Real Estate*
5 *Investment Trust Act of 2007.*”
6

7 SECTION 2. *Declaration of Policy.* – It is the policy of the State to
8 promote the development of the capital market by providing an enabling regulatory
9 environment and legal framework for real estate investment trusts.
10

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

- 12 a. “Associate” of a director includes:
13 i. any member of the director’s immediate family (*i.e.*, spouse,
14 child, stepchild, brother, sister or parent); and
15 ii. Any company in which he/she and his/her immediate family
16 together, directly or indirectly, have an interest of twenty five
17 percent (25%) or more.
18 b. “Cash Equivalent Items” means instruments or investments that are
19 highly liquid and marketable and are considered good as cash as
20 determined in accordance with the rules prescribed by the Commission.
21 c. “Commission” or “SEC” refers to the Securities and Exchange
22 Commission of the Philippines.
23 d. “Deposited Property” means the value of the Real Estate Investment
24 Trust’s total assets based on the latest valuation.

- 1 e. "Exchange" means The Philippine Stock Exchange, Inc. or any entity
2 registered with the Commission as a stock exchange pursuant to the
3 Securities Regulation Code.
- 4 f. "Interested Party" includes:
- 5 i. The sponsor/promoter of the Real Estate Investment Trust;
- 6 ii. The Real Estate Investment Trust Manager;
- 7 iii. The adviser of the Real Estate Investment Trust;
- 8 iv. A director of the sponsor/promoter, Real Estate Investment
9 Trust Manager, adviser or Associate of any such director; or
- 10 v. A Related Corporation or partnership as may be defined by the
11 Commission.
- 12 g. "Net asset value" or "NAV" means the total assets less total liabilities
13 (excluding shareholders' interest if this is classified as a liability).
- 14 h. "NIDA" means net income (loss) before extraordinary item,
15 depreciation and amortization.
- 16 i. "Real Estate Investment Trust Manager" shall be the manager of the
17 assets of the Real Estate Investment Trust.
- 18 j. "Real Estate Investment Trust" shall be a stock corporation
19 established in accordance with the Corporation Code of the Philippines
20 and the rules and regulations promulgated by the Commission or a
21 stock corporation organized under the laws of a foreign country solely
22 for the purpose of owning income-producing real estate assets and real
23 estate securities. For purposes of clarity, a real estate investment
24 trust, although designated as a trust, does not have the same technical
25 meaning as "trust" under existing laws and regulations but is used
26 herein for the sole purpose of adopting the internationally accepted
27 description of the company in accordance with global best practices.
- 28 k. "Real Estate-Related Assets" shall mean:
- 29 i. debt securities and listed shares issued by property companies;
30 or
- 31 ii. other funds and assets, including personal property, incidental
32 to the ownership of real estate.
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- 1 6.3 A Real Estate Investment Trust must not undertake property
2 development activities whether on its own, in a joint venture with
3 others, or by investing in unlisted property development companies,
4 unless it intends to hold the developed property upon completion. The
5 total contract value of property development activities undertaken and
6 investments in uncompleted property developments should not exceed
7 ten percent (10%) of its Deposited Property.
- 8 6.4 At least thirty five percent (35%) of its Deposited Property should be
9 invested in real estate.
- 10 6.5 Not more than five percent (5%) of its investments in listed or unlisted
11 debt securities and listed shares of or issued by property and non-
12 property corporations (local or foreign) and other locally-registered Real
13 Estate Investment Trusts should be invested in any one issuer's
14 securities or any one manager's funds.
- 15 6.6 A Real Estate Investment Trust may invest in local or foreign assets,
16 subject to the terms of its articles of incorporation. Where an
17 investment in a foreign real estate asset is made, the Real Estate
18 Investment Trust should ensure that the investment complies with all
19 the applicable laws and requirements in that foreign country, such as,
20 but not limited to, foreign ownership restrictions, if any, and requisites
21 of having good and valid title to that real estate.
- 22 6.7 When investing in real estate as a joint owner, the Real Estate
23 Investment Trust should make such investment by acquiring shares or
24 interests in an unlisted special purpose vehicle constituted to hold/own
25 the real estate and the Real Estate Investment Trust should have
26 freedom to dispose of such investment. The joint venture agreement,
27 memorandum and articles of association and/or other constitutive
28 document of the special purpose vehicle should provide for a minimum
29 percentage of distributable profits of the special purpose vehicle that
30 will be distributed and grant the Real Estate Investment Trust veto
31 rights over key operational issues of the special purpose vehicle.

32

33 **SECTION 7. Aggregate Leverage Limit.** – The total borrowings and
34 deferred payments of a Real Estate Investment Trust should not exceed thirty five
35 percent (35%) of its Deposited Property, unless the Commission provides otherwise:
36 *Provided, however, That the total borrowings and deferred payments of a Real*

1 Estate Investment Trust that has a credit rating of "A" or higher, or a rating similar
2 thereto, by any rating agency recognized by the Commission may exceed thirty five
3 percent (35%) but not more than sixty percent (60%) of its Deposited Property.
4

5 **SECTION 8. *Interested Party Transactions.*** – A Real Estate Investment
6 Trust may acquire assets from or sell assets to Interested Parties or invest in
7 securities of or issued by Interested Parties: *Provided*, That the following
8 requirements are met:

- 9 a. full, fair, timely and accurate disclosures on the identity of the parties
10 and other important details of the transaction have been made to the
11 Exchange;
- 12 b. the price at which the assets are to be acquired or sold is reasonable;
13 and
- 14 c. the assets to be purchased are valued by an independent appraiser.
15

16 **SECTION 9. *Valuation.*** – A full valuation of a Real Estate Investment
17 Trust's assets must be conducted by an independent appraisal company, duly
18 accredited by the Commission, at least once a year in accordance with the
19 applicable rules of asset valuation and valuation methodology prescribed by the
20 Commission.
21

22 **SECTION 10. *Purchase of Real Estate Assets.*** – A Real Estate
23 Investment Trust should purchase or sell real estate assets for value.
24

25 **SECTION 11. *Withdrawal of Registration.*** – If the Commission finds that
26 the Real Estate Investment Trust was established so as to seek the benefits of this
27 Act without a true intention to carry it out, the Commission shall withdraw or
28 cancel the registration of the Real Estate Investment Trust. The Real Estate
29 Investment Trust shall pay as fine an amount equal to the taxes plus a surcharge of
30 twenty five percent (25%) of the said taxes from which the Real Estate Investment
31 Trust has been exempted, without prejudice to the penalties under this law and the
32 National Internal Revenue Code of 1997, as amended.
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ARTICLE IV
TAXES AND OTHER RELATED ISSUES

SECTION 15. *Income Taxation of Real Estate Investment Trusts.* – Real Estate Investment Trusts shall be exempt from income tax under Chapter IV, Title II of the National Internal Revenue Code of 1997, as amended.

SECTION 16. *Transfer of Assets.* – Any existing law to the contrary notwithstanding, the sale or transfer of assets to Real Estate Investment Trusts, which includes the sale or transfer of any and all security interest thereto, shall be exempt from the following taxes:

- a. Documentary stamp tax on the abovementioned sale or transfer of assets as may be imposed under Title VII of the National Internal Revenue Code of 1997, as amended;
- b. Capital gains tax on the abovementioned sale or transfer of assets classified as capital assets as defined under Section 39 of the National Internal Revenue Code of 1997, as amended;
- c. Creditable withholding income tax imposed on the sale or transfer of assets classified as ordinary assets pursuant to Revenue Regulations No. 2-98, as amended; and
- d. Value-added tax on the transfer of assets as may be imposed under Title IV of the National Internal Revenue Code of 1997, as amended, or gross receipts tax under Title V of the same Code, whichever is applicable.

Except for registration fees payable to the Commission, 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.

SECTION 17. *Issuance and Transfer of Securities.* – The original issuance of shares in Real Estate Investment Trusts shall be exempt from DST, or any other taxes imposed in lieu thereof. All secondary trades and subsequent transfers of shares in Real Estate Investment Trusts, including all forms of credit enhancement in such instruments, shall not be exempt from DST, CGT and VAT, or any other taxes imposed in lieu thereof, without prejudice to the exemptions from the aforesaid taxes under the National Internal Revenue Code of 1997, as amended.

1 **SECTION 18. *Dividends.*** – Dividends paid by Real Estate Investment
2 Trusts to its shareholders shall not be subject to income tax under Title II of the
3 National Internal Revenue Code of 1997, as amended.

4
5 **SECTION 19. *Conditions for Tax-Free Treatment.*** – Real Estate
6 Investment Trusts shall benefit from Sections 15 to 18 of this Article if it meets the
7 following requirements:

8 a. The Real Estate Investment Trust complies with all the requirements
9 of Article II hereof;

10 In order to qualify for the exemption from taxes as provided in Sections 15
11 and 17 hereof, the Real Estate Investment Trust must be listed and remain
12 listed with the Exchange; and

13 b. The Real Estate Investment Trust complies with the applicable
14 minimum public ownership requirement of the Exchange;

15 c. The Real Estate Investment Trust must actually distribute at least
16 ninety (90%) of its NIDA (excluding income on the sale of the Real
17 Estate Investment Trust’s assets that are re-invested in the Real
18 Estate Investment Trust in accordance with this Act), if any, as
19 dividends to its shareholders;

20 d. In order to qualify for the exemption from taxes as provided in Section
21 16 hereof, the Real Estate Investment Trust must not subsequently
22 sell or transfer real estate and real estate-related Assets, and any and
23 all security interest thereto, within a period of five (5) years from the
24 date of the sale or transfer to the Real Estate Investment Trust. If any
25 tax-exempt asset acquired by a Real Estate Investment Trust is sold,
26 transferred or otherwise disposed of within a period of less than five (5)
27 years from such transaction, the exemption of said transaction from
28 said taxes shall be deemed revoked and all of said taxes shall become
29 due and payable and subject to all interests and surcharges thereon.

30
31 **SECTION 20. *Delisting of the Real Estate Investment Trust.*** In the
32 event the Real Estate Investment Trust is delisted from the Exchange, whether
33 voluntarily or involuntarily, the tax incentives granted under this Act shall be *ipso*
34 *facto* revoked and withdrawn and any tax incentives that may have been availed of
35 by the Real Estate Investment Trust from the date of delisting shall immediately be

1 refunded to the Government and the surcharge and penalty prescribed by Section
2 11 hereof shall apply.

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4 **ARTICLE V**
5 **PENAL PROVISIONS**
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7 **SECTION 21. *Penalties.*** – Any person who violates any of the provisions of
8 this Act, or the rules and regulations promulgated by the Commission under
9 authority hereof, or any person who, in a registration statement, notice, or any
10 submission filed under this Act, makes any untrue statement of a material fact or
11 omits to state any material fact required to be stated therein or necessary to make
12 the statements therein not misleading, shall, upon conviction, suffer a fine of not
13 less than Fifty Thousand Pesos (P50,000.00) nor more than Five Million Pesos
14 (P5,000,000.00) or imprisonment of not less than six (6) years and one (1) day nor
15 more than twenty-one (21) years, or both in the discretion of the court. If the
16 offender is corporation, partnership or association or other juridical entity, the
17 penalty may, in the discretion of the court, be imposed upon such juridical entity
18 upon the officer or officers of the corporation, partnership, association or entity
19 responsible for the violation, and if such officer is an alien, he shall in addition to
20 the penalties prescription prescribed, be deported without further proceedings after
21 service of sentence.
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23 **ARTICLE VI**
24 **MISCELLANEOUS PROVISIONS**
25

26 **SECTION 22. *Implementing Rules and Regulations.*** – The Commission,
27 in coordination with the Bangko Sentral ng Pilipinas (“BSP”) and the Department
28 of Finance (“DOF”), shall promulgate the implementing rules and regulations
29 implementing the provisions of this Act; *Provided*, That the Commission, BSP and
30 the DOF may continue to issue separate regulations that will apply exclusively to
31 the institutions under their respective jurisdiction, consistent with the
32 implementing rules and regulations.
33

34 **SECTION 23. *Repealing Clause.*** – All laws, executive orders, rules and
35 regulations, and parts thereof which are inconsistent with this Act are hereby
36 repealed or amended accordingly.

1 **SECTION 24. *Separability Clause.*** – If, for any reason, any article or
2 provision of this Act or any portion thereof or application of such article,
3 provision, or portion thereof to any person, group, or circumstance is declared
4 invalid or unconstitutional, the remainder of this Act shall not be affected by such
5 decision.

6
7 **SECTION 25. *Effectivity Clause.*** – This Act shall take effect fifteen (15)
8 days after its complete publication in the *Official Gazette* or in at least two (2)
9 newspapers of general circulation in the Philippines.

10
11 *Approved,*