

Republic Act No. 9856 “An Act Providing the Legal Framework for Real Estate Investment Trust and for Other Purposes” (REITS law)

On December 17, 2009, Republic Act No. 9856, more popularly known as the REITS law lapsed into law without the signature of the President.

What is a Real Estate Investment Trust (REIT)?

It is a stock corporation established in accordance with the Corporation Code and the rules and regulations of the SEC primarily for the purpose of owning income generating real estate assets. Although designated as a “trust”, it does not have the same technical meaning as a trust under existing laws and regulations. The term “trust” is used to adopt the internationally accepted description of the company in accordance with global best practices.

Requirements of REIT under RA 9856:

1. It must be organized as a public company under the Corporation Code and listed in the Philippine Stock Exchange;
2. It must maintain its status as a listed company and after listing must have at least one thousand (1000) public shareholders holding at least fifty (50) shares of any class of shares;
3. The public shareholders must own at least 1/3 of the outstanding capital stock;
4. Minimum paid-up capital of three hundred million pesos (Php300,000,000.00); and
5. At least 1/3 of the board of directors must be independent directors

What are the allowable investments for REITs?

1. Real estate, whether freehold or leasehold, located in the Philippines. It can invest in real estate located outside the Philippines provided that such investment

does not exceed 40% of its deposited property and with special authority coming from the SEC;

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

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

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

5. Such other similar investments as may be allowed by the SEC.

What are the investment restrictions for REITs?

1. At least 75% of the deposited property of the REIT must be invested in, or consist of, income generating real estate;

2. It cannot undertake property development activity whether on its own, in a joint venture or by investing in unlisted property development companies unless it intends to hold the developed property upon completion. In any event the total contract value of property development activities undertaken and investment in undeveloped properties should not exceed 10% of the deposited property of the REIT.

3. It cannot invest more than 5% of its investible fund 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 by the appropriate regulatory agency.

4. It cannot invest more than 15% of its investible funds in one issuer's securities or in any one managed fund except

government securities where the limit is 25%.

5. 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 such investment. The joint venture agreement, memorandum and articles of association or other constitutive document of the special purpose vehicle should provide for a minimum percentage of distributable profits that will be distributed, and grant the REIT veto rights over key operational issues of the special purpose vehicle

Is there a requisite for dividend declaration?

A REIT must distribute annually at least 90% of its distributable income as dividends to its shareholders not later than the last day of the fifth month following the close of the fiscal year of the REIT. Declaration of dividends must be in accordance with Section 43 of the Corporation Code.

What is the borrowing limit for REITs?

Total borrowings and deferred payments of a REIT should not exceed 35% of its deposited property. Unless the REIT has a publicly disclosed investment grade credit rating by a duly accredited or internationally recognized rating agency then it may exceed 35% but not more than 70% of its deposited property.

Can a REIT be wholly foreign owned?

A REIT that owns land located in the Philippines must comply with ownership limitations imposed under Philippine laws.

What is the tax incentives granted to REITs?

1. It is not subject to the minimum corporate income tax of 2%

2. Income payments to a REIT will be subject to a lower creditable withholding tax of 1%,

3. The sale or transfer of real property to a REIT will be subject to only 50% of the applicable documentary stamp tax, and

4. Cash or property dividends paid by a REIT will be subject to a final tax of 10%, subject to certain exceptions and provisions (such as lower tax treaty rates; dividends received by domestic corporation and resident foreign corporation are exempt; Overseas Filipino investor are exempt for seven years from the effectivity of the Act)

Note that in computing the taxable net income of a REIT, dividends distributed by the REIT as of the end of the taxable year are excluded. Dividends distributed during the period between the close of a taxable year and on the last day of the fifth month following the close of the taxable year will be considered as paid on the last day of such taxable year.

What are the other incentives granted to a REIT?

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.

Can a REIT, which is not yet listed, claim the tax incentives given under the law?

The incentives can be availed of by an unlisted REIT provided it is listed with an Exchange not later than two years from the initial availment of the incentives.