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LEGAL ALERT

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Philippine Government Relaxes Rules on REITs, New REIT Listings Expected Soon

Almost 11 years after the enactment of the Real Estate Investment Trust (“**REIT**”) Act (Republic Act No. 9856), the Philippines is now expecting the first REIT issuance after the government has finally relaxed the major roadblocks that previously hindered the successful launch of REITs in the Philippines. The three key agencies involved are the Securities and Exchange Commission (“**SEC**”), Bureau of Internal Revenue (“**BIR**”), and the Philippine Stock Exchange (“**PSE**”). In a joint launching event earlier this year, the SEC, BIR, and PSE issued coordinated rules that aim to relax stringent capital, minimum public ownership (“**MPO**”), and tax requirements.

On 20 January 2020, the SEC released SEC Memorandum Circular No. 1 series of 2020 (“**SEC MC 1 s. 2020**”) or the Revised Implementing Rules and Regulations of the REIT Act. Meanwhile, the BIR and the PSE have yet to release their respective issuances. Once published, the issuances will take effect.

Significant developments

The following are the significant changes brought about by the new rules.

Requirements	Under New Rules	Under Old Rules
Minimum Public Ownership	33% *provided that proceeds received by the sponsor/promoter are reinvested back to the Philippines within one year from the receipt of proceeds*	40%-67%
Value Added Tax (“VAT”) on transfers of real property to the REIT	Exempt *provided that certain conditions are met*	Subject to VAT
Escrow	Removed	Income tax collectible from the dividends declared by the REIT on its first and second year prior to attaining the MPO are required to be placed in an escrow account in favor of the BIR.

In addition to the foregoing, SEC MC 1 s. 2020 instituted the following additional requirements:

- enhanced the qualifications and imposed additional organisational requirements for the fund manager and the property manager primarily aiming to ensure independence.
- prescribed for additional requirements for related party transactions such as approval of a Related Party Transactions Committee and compliance with SEC's Rules on Material Related Party Transactions for Publicly-Listed Companies.

Implications for business in the Philippines

With the relaxed regulatory framework for REITs, this year seems to be an auspicious time to invest in REITs. Major real estate developers have signified their intent to offer REIT issuances. More and more companies are also expected to list as REITs this year.
On the part of the public, the increased REIT issuances will grant more opportunities to invest in income generating real estate assets without the need to acquire ownership of the underlying property. However, the REIT company which holds title to land in the Philippines is still subject to the 60%-40% Filipino-foreign ownership limit.

Conclusion

The relaxation of the rules governing REITs has long been a continuing effort on the part of the government to revive the REIT Act, which was previously dubbed as a "dead law." Alongside with the goal of enticing investors, the REIT is seen as a tool to finance infrastructure projects and attain greater financial inclusiveness while at the same time safeguarding public welfare and ensuring investor protection.

If you have any questions or require any additional information, please contact Felix Sy or Aubbrey Lim of Insights Philippines Legal Advisors (a member of ZICO Law).

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