Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC-OGC Opinion No. 22-10
Re: Real Estate Investment Trust (REIT)

15 August 2022

PRYCE CORPORATION
17th Floor, Pryce Center
1179 Don Chino Roces Ave., cor. Bagtikan St.
Makati City
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Attention: Atty. Jorge Patrick A. Yasay

Dear Atty. Yasay:

This refers to your letter dated 11 March 2020 requesting the Commission's opinion on various matters involving a real estate investment trust (REIT) company.

You stated in your letter that Pryce Corporation ("Pryce") is a property holding and real estate development company duly registered with the Commission, engaged in the development and operation of memorial parks. Pryce is planning to put up a REIT company under the name "Pryce REIT" pursuant to Republic Act No. 9856[1] or the REIT Act.

Once Pryce REIT is incorporated, Pryce is contemplating on leasing to the former some of its real properties used in the operation of its memorial gardens business. In the alternative, Pryce is also considering conveying to Pryce REIT, either through sale or assignment, the above described real properties.

Currently, the types of income that Pryce generates from the operation of the memorial parks are: a) the sale of the burial lots; b) the sale of double interment right; c) collection of periodic maintenance assessment charges; and d) rentals from the use of the memorial park facilities.

Relative thereto, Pryce is requesting the Commission's opinion on the following queries:

1. "Is it correct to believe that the term "income-generating real estate" *excludes* income from (a) to (d) enumerated above?"

2. "Can Pryce lease to Pryce REIT its real properties used in the operation of its memorial parks business?"; and

3. "Can Pryce convey (by sale or assignment) to Pryce REIT the memorial parks?"

[1] Lapsed into law on 17 December 2009, without the signature of the President, in accordance with Article VI, Section 27(1) of the Constitution.

Nature and Allowable Investments of REIT

The REIT Act defines an REIT as a stock corporation established in accordance with the Corporation Code, now the Revised Corporation Code (RCC), and the rules and regulations promulgated by the Commission principally for the purpose of owning income-generating real estate assets.[2] The term "**income-generating real estate**" means **real property which is held for the purpose of generating a regular stream of income *such as* rentals, toll fees, user's fees and the like, as may be further defined by the Commission.**[3]

Section 8.3 of the REIT Act provides the allowable investments that a REIT may only invest in, which includes real estate on leasehold that is located in the Philippines, to wit:

"8.3 Allowable Investments — A REIT may only invest in:

i. **Real estate,** whether **freehold** or **leasehold, located in the Philippines. A REIT may invest in income-generating real estate** located outside of the Philippines: Provided, That such investment does not exceed forty percent (40%) of its deposited property and only upon special authority from the Commission. The Commission in issuing such authority shall consider, among others, satisfactory proof that the valuation of assets is fair and reasonable. An investment in real estate may be by way of direct ownership or a shareholding in an unlisted special purpose vehicle constituted to hold/own real estate;
ii. Real estate-related assets, wherever the issuers, assets, or securities are incorporated, located, issued, or traded;
iii. Managed funds, debt securities and listed shares issued by local or foreign non-property corporations;
iv. Government securities issued on behalf of the Philippine government or governments of other countries and securities issued by multilateral agencies;
v. Cash and cash equivalent items; and
vi. Such other similar investment outlets as the Commission may allow.

xxx" *(Emphasis supplied)*

These real property assets form part of the **deposited property**[4] of the REIT, which is the total value of the REIT's assets reflecting the fair market value of the total assets held by the REIT. **Further, at least seventy-five (75%) of the deposited property of the REIT must be invested in, or consist of, income-generating real estate.**[5]

Based on the foregoing, Pryce REIT must meet the requirements of the REIT Act, among which is that it primarily invests in ***real estate which has a steady stream of income.*** Specifically, at least seventy-five (75%) of the deposited property of Pryce REIT must be invested in, or consist of, income-generating real estate.[6]

As to your first query, the ***sale*** of the burial lots and double interment rights, which are the primary sources of income of the memorial parks, are ***dispositions*** of real property assets, thus there would be no generation of recurring income for the REIT selling such real property assets. Upon the sale by the REIT of the burial lots and double interment rights to the buyers, the

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[2] Article I, Section 3, par. (cc) of the REIT Act.
[3] Article I, Section 3, par. (m) of the REIT Act.
[4] Article I, Section 3, par. (i) of the REIT Act. (i) "**Deposited Property**" means the total value of the REIT's assets based on the latest valuation determined in accordance with the rules and regulations promulgated by the Commission.
[5] Article II, Section 8.5 of the REIT Act.
[6] See Note 5.

REIT divests itself of its ownership rights in favor of the buyer. Thus, these properties *may not* be considered as part of the income-generating real estate assets of a REIT.[7]

Meanwhile, the collection of periodic maintenance assessment charges and rentals from the use of the memorial park facilities may fall under the definition of income-generating real estate as these may generate a regular stream of income, same as the nature of the rentals and user's fees mentioned in the definition of REIT under the REIT Act.[8] In this case, there is no deprivation of the REIT's ownership rights over the real property assets subject of these maintenance assessment charges and rentals on the use of the memorial park facilities.

As to your second and third queries, Pryce may lease or convey, either by sale or assignment, its real property assets used in the operation of its memorial parks business to Pryce REIT, *provided that* Pryce REIT must ensure that at least seventy-five (75%) of its deposited property must be invested in, or consist of, income-generating real estate as discussed above.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[9] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

for:

ROMUALD C. PADILLA
General Counsel

[7] Subject to actual evaluation by the Commission's Markets and Securities Regulation Department upon submission of application for incorporation of a REIT
[8] See Note 7.
[9] Section 7, SEC Memorandum Circular 2003-15, 16 December 2003.

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