Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 26-01
Re: Real Estate Investment Trust Act of 2009; Reinvestment Plan

12 January 2026

FILINVEST REIT CORP.
Filinvest Building
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Metro Manila
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Attn: ATTY. KATRINA O. CLEMENTE-LUA
Legal Counsel/Corporate Secretary

Madame:

This pertains to your letter dated 14 April 2023,[1] requesting for opinion in connection with the acquisition by Filinvest REIT Corp. ("FILRT") of a 29,086 square meter (sq.m.) land in Boracay from Filinvest Development Corporation ("FDC").

As stated in your letter, FDC is the parent company of Filinvest Land, Inc. ("FLI"), which is the Sponsor of FILRT and currently owns 63.27% of FILRT.

The payment of the purchase price will be in accordance with the schedule of payments as agreed upon by FILRT and FDC.

You submit that FDC cannot be mandated to submit a Reinvestment Plan of the proceeds received either from the sale of shares in the REIT company or from the sale of an income-generating asset to the REIT, as provided in the Revised Implementing Rules and Regulation ("Revised IRR")[2] of Republic Act No. 9856, otherwise known as "The Real Estate Investment Trust (REIT) Act of 2009" ("REIT Act"), because it cannot be considered a Sponsor/Promoter as envisioned under the law, based on the following grounds:

1. Based on the definition of a Sponsor/Promoter under the REIT Act and its Revised IRR, only those entities who contribute cash or property for the *incorporation and establishment* of the REIT company can be considered as its Sponsors/Promoters.

2. FLI is FILRT's Sponsor, while FDC is FLI's parent company. Since FDC did not *directly* contribute any property or cash into a REIT company when it was incorporated or established, it cannot be considered as a Sponsor/Promoter.

Your queries are:

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[1] Received *via* email on 10 May 2023.
[2] SEC Memorandum Circular No. 1, Series of 2020.

1. Whether or not FDC, being the parent company of FLI, will be considered a Sponsor/Promoter by virtue of a simple sale of real estate property to a REIT company.

2. Whether or not a reinvestment is required for the proceeds derived by FDC from the sale of the subject property to FILRT, in a straight property-for-cash transaction.

3. Whether or not FDC is required to submit a Reinvestment Plan for the proceeds derived from the sale of the subject property to FILRT, despite not being its Sponsor/Promoter.

I. Definition of Sponsor/Promoter under the REIT Act and its Revised IRR.

A Sponsor/Promoter is defined under the REIT Act and its Revised IRR, respectively, as follows:

Section 3. Definition of Terms. - For the purposes of this Act, the term:

xxx xxx xxx

(jj). "Sponsor/Promoter" means any person who, acting alone or ***in conjunction with one or more other persons,*** ***<u>directly or indirectly</u>, contributes cash or property <u>in incorporating</u> a REIT.***

xxx xxx xxx[3]

Rule 3 - Definition of Terms Used in the Rules

When used in these Rules and Regulation, the term –

xxx xxx xxx

vv. "Sponsor/Promoter" means any person who, acting alone or ***in conjunction with one or more other persons,*** ***<u>directly or indirectly</u>, contributes cash or property <u>in establishing</u> a REIT.***

xxx xxx xxx[4]

II. Legislative History of the REIT Act; Role of the Sponsor/Promoter under the REIT Act and its Revised IRR.

In sponsoring Senate Bill No. 2693 (the bill that was enacted into the REIT Act), then Senator Edgardo J. Angara ("Sen. Angara") enumerated the following benefits in establishing a REIT, while at the same time citing scenarios how a REIT is established through a Sponsor/Promoter that provides and transfers income-generating real estate assets into the REIT, thus:

How does one benefit form a REIT?

First, there is a common trend in markets with successful REIT models: REITs receive tax incentives from the government, but are required to pay out a substantial part of their distributable income by way of dividends to shareholders. This is mandatory under our proposal, in addition to other requirements, to ensure investor protection.

Second, these companies provide investors with the opportunity to participate directly in the ownership and financing of large-scale real estate projects at affordable rates of investment. For instance, if SM decides to establish a REIT, one can now participate in the phenomenal growth of SM markets throughout the country or if one decides to

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[3] Emphasis, italics, and underscoring supplied.
[4] Emphasis, italics, and underscoring supplied.

On 08 January 2026, the Commission issued Memorandum Circular No. 1, Series of 2026 (REVISIONS TO SEC MEMORANDUM CIRCULAR NO.1, SERIES OF 2020 OR THE REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9856, OTHERWISE KNOWN AS THE REAL ESTATE INVESTMENT TRUST [REIT]), which shall take effect fifteen (15) days after its compete publication in the Official Gazette or in at least two (2) newspapers of national circulation in the Philippines. "Sponsor/Promoter" has been defined in this wise:

ww. "Sponsor/Promoter" means any person or entity who, acting alone or in conjunction with one or more other persons, directly or indirectly, contributes cash or property in establishing a REIT.

register the NLEX or South Superhighway, the toll ways, then one can participate in the huge cash flows of North and South Expressways.

Thus, investors can make the investments in the REIT without being burdened by the disadvantages of illiquidity, high transaction and management costs that are associated with traditional private real estate ownership.

Third, investors also enjoy the assurance of a fair, transparent and efficient market for buying and selling the REIT securities, because the **REIT law will require the listing of the REIT stocks in the local stock exchange.** Therefore, it is easier to buy or sell the REIT shares than to directly buy and sell real estate or properties.

Fourth, investment risks are minimized because the REIT assets are managed professionally by an independent fund manager and property manager.

Finally, as a result of the openness of the stock market, there will be cross-border transactions, investments from abroad will be encouraged making the Philippine capital market more dynamic and more viable.[5]

In a manner strikingly harmonious to Sen. Angara's sponsorship speech, during the Senate deliberations, he ***consistently*** demonstrated how a Sponsor/Promoter provides the seed assets, whether in cash or property, or a combination of both, to the REIT in exchange for shares, *viz:*

Asked how a REIC can be put up by an individual who owns an income-producing building with a P1-billion value, Sen. Angara stated that the owner should first, allow at least 30% of its stocks to be owned by 1,000 stockholders; ***second, list the shares with the stock exchange and register the same with the Securities and Exchange Commission (SEC);*** and third, pay out 90% of the rental income or income generated from the property.

On whether the individual owner has to incorporate and transfer the building to a REIC, ***Senator Angara clarified that he must organize and incorporate and then transfer the building to the REIC in exchange for shares.*** He added that under the National Internal Revenue Code, the reorganization is tax-free.[6]

It can be logically inferred that because of the aforecited property-for-share swap, the Sponsor/Promoter may ***initially*** own 100% of the REIT before listing. Thereafter, upon listing and as mandated by law, the Sponsor/Promoter shall subsequently dilute or divest itself of 1/3 of the outstanding capital stock of the REIT by selling its shares to the public.[7]

More, the Sponsor's/Promoter's initial contribution primarily serves as the REIT's foundational portfolio. Absent such contribution, the REIT will lack the mandated income-generating assets required to qualify under the REIT Act. This highlights that the Sponsor's/Promoter's initial contribution is necessary for the establishment of a REIT.

The Sponsor's/Promoter's critical role in the establishment of a REIT and its subsequent role during the initial public offering is evidenced by the requirement that it is made a party to the Listing Agreement. The Listing Agreement is a manifestation of the Sponsor's/Promoter's conformity to comply with and be bound by all the listing rules.

One of the requirements under the listing rules is that the Sponsor/Promoter is mandated to make a reinvestment in the Philippines after realizing proceeds from the sale of its REIT shares (issued in exchange for income-generating real estate to the REIT) or from the sale of any of its income-generating properties to the REIT, as the case may be. Thus:

e. Reinvestment in the Philippines. In line with the policy to promote the development of the capital market and Filipino participation in the real estate industry, democratize wealth by broadening the participation of Filipinos in the ownership of real estate in the Philippines, use the capital market as an instrument to help finance and develop infrastructure projects in the Philippines, ***reinvestment in the Philippines shall be an***

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[5] Journal of the Senate, Session No. 44, 27 January 2009, p. 1433. Emphasis supplied.

[6] Journal of the Senate, Session No. 50, 10 February 2009, p. 1576. Emphasis, italics, and underscoring supplied.

[7] *See* Rule 4, Section 5.1 (a), Revised IRR.

Section 5. *Requirements.* The REIT shall comply with the following requirements:

5.1. Body Corporate.

a. Minimum Public Ownership. A REIT shall be a public company and to be considered as such, a REIT shall: (a) maintain its status as a listed company; and (b) **upon and after listing, have at least one thousand (1,000) Public Shareholders each owning at least fifty (50) shares of any class of shares, and who, in aggregate, own at least one-third (1/3) of the outstanding capital stock of the REIT.**

xxx xxx xxx

> ***indispensable requisite for any Sponsor/Promoter who contributes income-generating Real Estate to a REIT.***
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> ***The relevant listing rules shall be issued which primarily requires the submission of a Reinvestment Plan with a firm undertaking to reinvest** (a) any proceeds realized by the Sponsor/Promoter from the sale of REIT shares of other securities issued in exchange for income-generating Real Estate transferred to the REIT and (b) any money raised by the Sponsor/Promoter from the sale of any of its income-generating Real Estate to the REIT, in any Real Estate, including any redevelopment thereof, and/or Infrastructure Projects in the Philippines.* This reinvestment shall be made within one (1) year from the date of receipt of proceeds or money by the Sponsor/Promoter.
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> xxx xxx xxx
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> The exchange shall also adopt in its rules the appropriate mechanism, internal controls, and procedures to include, among others, ***requiring the Sponsor/Promoter to be a party to the Listing Agreement*** and prescribing reporting requirements to monitor the REIT.[8]

III. Interpretation of "Sponsor/Promoter" under the context of the REIT Act and its Revised IRR.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis.* It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim, *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[9]

Applying the foregoing, Section 3(jj) of the REIT Act and Rule 3(vv) of its Revised IRR are both clear and unequivocal in stating that a Sponsor/Promoter "means any person who, acting alone or in conjunction with one or more other persons, ***directly or indirectly***, contributes cash or property ***in establishing (incorporating) a REIT***."

Consequently, in order to qualify and be identified as a Sponsor/Promoter, the following elements should be complied with: (1) a person who, acting alone or in conjunction with one or more other persons, directly or indirectly, contributes cash or property; and (2) such contribution must relate to the establishment/incorporation of a REIT.

a. Direct or Indirect Contribution.

Direct contribution, by the nomenclature itself, means that the contribution was given by the Sponsor/Promoter itself, or any party for that matter, without any intervening entity or medium, into the REIT company.

In contrast, indirect contribution implies that the contribution was given by a party into the REIT company through an intervening medium, party, layer of control, or other similar means. For example, where a parent company holds majority ownership over the Sponsor/Promoter, and several of the members and officers of the parent company's Board of Directors ("Board") likewise seat on the Sponsor's/Promoter' Board, the circumstances *may* illustrate indirect contribution. This is based on the parent company's control over its subsidiary, the Sponsor/Promoter.

Under the REIT Act, control is defined as:

> Section 3. Definition of Terms. - For the purposes of this Act, the term:
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> xxx xxx xxx
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> (g) "Control" exists in favor of a parent corporation when it has the power to direct or govern the financial and operating policies of an enterprise so as to obtain benefits from Its activities. ***Control is presumed to exist when the parent owns, directly or indirectly, through subsidiaries, more than one - half (1/2) of the voting power of an***

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[8] Rule 4, Section 5.1 (e), Revised IRR. Emphasis, italics, and underscoring supplied.

[9] *National Grid Corp. of the Philippines v. Manila Electric Co.*, G.R. No. 239829, 29 May 2024. Citations omitted.

enterprise, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. x x x[10]

This Office notes that, per your representation, FDC is FLI's parent company. Based on the Commission's records, FDC owns the ***majority*** of FILRT's Sponsor/Promoter, FLI, with its ownership extending to 64.67% and with several of the members and officers of FDC's Board holding a seat in FLI's Board as well. With this, it can be gleaned that FDC has control of FLI in its affairs.

b. Contribution must relate to the Establishment/Incorporation of a REIT.

Incorporation is described as the performance of conditions, acts, deeds, and writings by incorporators, and the officials acts, certification or records, ***which give the corporation its existence.*** Consequently, the creation of a corporation could be taken to include all of the acts and doings from the enactment of the general corporation law by the legislature, through the promotion, underwriting, preparation and execution and filing of the incorporation papers and obtaining the certificate or charter, to the organization and the first meeting and election which set the corporation in motion full-fledged.[11]

Similarly, to establish means "to settle or fix firmly; ... place on a permanent footing"; or "to originate and secure the permanent existence of, to found, to institute, to create and regulate, as of a colony, estate or other institution or to place upon a secure foundation.[12]

In this connection, a REIT is "a stock corporation ***established in accordance with the Revised Corporation Code of the Philippines*** and the rules and regulations promulgated by the Commission principally for the purpose of owning income - generating real estate assets."[13]

The foregoing should be ***read in conjunction*** with the registration and listing requirement of REITs, that is, the shares of stock of the REIT must be registered with the Commission in accordance with the Securities Regulation Code and listed in accordance with the rules of the Exchange.[14]

In summary, the word "establish" or "incorporate" encompasses the following: (1) registration of a REIT as a stock corporation in accordance with law or conversion of existing companies into one; and (2) registration of the REIT's shares of stock with the Commission and listing of the same with the Exchange.

Accordingly, the contribution must relate to the incorporation of the REIT or the conversion of an existing company into a REIT, and the registration of the shares and listing of the same, as aforementioned. This is supported by the letter and intent of the law.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute — its every word.[15] Under this principle, the qualifying phrase "in the establishment/incorporation of a REIT" should not be regarded as a surplusage. It follows inevitably by law and statutory construction that the legislature used this qualifying phrase to give life to the whole provision of the REIT Act.

Had the legislature intended that *any* contribution qualifies one to be a Sponsor/Promoter, it could have simply worded the provision in a manner that allows an entity to be considered as such by mere contribution. Elsewise stated, the law could have already expressly worded the requirement for the Sponsor/Promoter by omitting the qualifying phrase "in the establishment/incorporation of a REIT."

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[10] Article I, Section 3, REIT Act. Emphasis and italics supplied.
[11] 1 Fletcher 445.
[12] *Palad v. Governor of Quezon Province*, G.R. No. L-24302, 18 August 1972.
[13] Section 3(cc) of the REIT Act and Rule 3(kk) of the Revised IRR.
[14] Rule 4, Section 2 of the Revised IRR.
"Exchange" means any entity registered with the Commission as a stock exchange pursuant to the Securities Regulation Code. (Rule 3(o) of the Revised IRR)
[15] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, 05 April 2017.

Further, the significance of the qualifying phrase is in accordance with the special role of the Sponsor/Promoter, as discussed under the Legislative History of the REIT Act (Item II hereof). What makes one a Sponsor/Promoter is its role in the establishment phase of a REIT. It is what sets it apart from an ordinary Related Party,[16] thereby requiring a set of rules not otherwise applicable to the latter.

Lastly, this view is also supported by the clear language of Section 5.1(e), Rule 4 of the Revised IRR. As mentioned, a Sponsor/Promoter is required by the Revised IRR to be a party to a Listing Agreement, because during listing, it is mandated to have a firm undertaking to reinvest: (a) any proceeds realized by it from the sale of REIT shares or other securities issued in exchange for income-generating Real Estate transferred to the REIT; and (b) any money raised by it from the sale of any of its income-generating Real Estate to the REIT, in any Real Estate, including any redevelopment thereof, and/or Infrastructure Projects in the Philippines.

Evidently, the rules mandate and contemplate that the firm undertaking must be executed exclusively by the Sponsor/Promoter at the point of listing. A third or separate party- *such as a corporation that has **not** yet assumed the status of a parent company of the Sponsor/Promoter at the time of the REITs incorporation and listing, and only acquired such status long after the REIT has commenced operations*— cannot validly bind itself in satisfaction to this requirement.

c. Application and Conclusion.

Applying the foregoing principles, for a parent company to be considered a Sponsor/Promoter under the law, its indirect contribution into the REIT company must have been done in connection with, or during, the establishment/incorporation of the REIT company.

In view of the two elements previously discussed that constitute one to be a Sponsor/Promoter, it can be concluded that a parent company of a Sponsor/Promoter, existing as such during any of the phases of the establishment or incorporation of a REIT, is an indirect contributor; hence, a Sponsor/Promoter of the REIT. Conversely, an entity that becomes such parent company after the REIT's establishment or incorporation is not covered by the definition of a Sponsor/Promoter.

Accordingly, the answers to your queries hinge on whether FDC was the parent company of FLI during FILRT's establishment or incorporation. If this condition is met, then the answers to your queries are in the affirmative; if not, they are necessarily negative.

It shall be understood that the foregoing opinion is rendered solely on basis of the facts, circumstances and documents disclosed/submitted and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission or upon the courts whether of similar or dissimilar circumstances.[17] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

Romuald C Padilla
General Counsel

[16] ss. "Related Party" includes:

i. A director, Principal Officer or Principal Stockholder of the REIT or associate of such persons;
ii. The Sponsor/Promoter of the REIT;
iii. The Fund Manager of the REIT;
iv. The Adviser of the REIT;
v. The Property Manager of the REIT;
vi. A director, Principal Shareholder or Principal Officer of the Sponsor/Promoter of the REIT, Fund Manager or Property Manager, or associate of any such persons; and

Related Corporation to the REIT, the Fund Manager or the Property Manager. (Rule 3(ss), Revised IRR)

[17] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.