SEC MEMORANDUM CIRCULAR NO._12
Series of 2024

TO: ALL CONCERNED

SUBJECT: **S**ECURING & **E**XPANDING **C**APITAL in **R**EAL **E**STATE **N**on-**T**raditional Securities (SEC RENT)

WHEREAS, the Philippine Real Estate Industry is a significant contributor to the Philippine economy and plays a role in the development of the country. It is a key driver of economic growth and job creation, as it supports various industries such as construction, finance and retail;

WHEREAS, commercial and residential properties such as hotels, resorts, condominiums, dormitories and apartments among others, provide temporary accommodation for tourist, renters, lessors, and generate revenue for property owners;

WHEREAS, investing in real estate property has high potential for returns on investment and is a means of generating additional income, either through rental income or capital gains from sale of properties;

WHEREAS, the upward trend in rental properties projects offers numerous growth and opportunities that developers, investors, owners and stakeholders can take advantage of to drive growth and profitability;

WHEREAS, investing or participating in rental property project may involve the sale or offer for sale or distribution of *investment contracts, certificate of participation or participation in a profit sharing agreement* to property owners as investors;

WHEREAS, Section 3.1 of the Securities Regulation Code ("SRC") defines securities and includes investment contracts, certificate of participation or interest or participation in a profit sharing agreements;

WHEREAS, Subsection 8.1 of the SRC prohibits the selling or offering for distribution of securities within the Philippines without a registration statement duly filed with and approved by the Commission;

WHEREAS, Subsection 12.1 of the SRC mandates that securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission of a sworn registration statement with respect to such securities, in such form and containing such information and documents prescribe by the Commission;

WHEREAS, Subsection 12.6 of the SRC directs the Commission to declare the registration statement effective or rejected, within forty-five (45) days after the date of filing of the registration statement;

WHEREAS, Subsection 28.1 of the SRC mandates that no person shall engage in the business of buying and selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission;

WHEREAS, Subsection 72.1 of the SRC states that, for purposes of its rules or regulations, the Commission may classify persons, securities and other matters within its jurisdiction, and prescribe different requirements for different classes of persons, securities, or matters.

NOW, THEREFORE, pursuant to the foregoing and other pertinent provisions of the SRC and its Implementing Rules and Regulations, the Commission hereby adopts the following guidelines for registration of securities for real estate companies issuing investment contracts, certificate of participation or participation in a profit sharing agreements by using form **SEC RENT.**

Section 1. Coverage. These guidelines shall cover the issuance of investment contracts, certificates of participation, profit-sharing agreements, and other forms of securities issued by real estate developers and/or managers (the "registrant") in relation to rental pool agreements.

"*Rental pool agreements*" refer to investment contracts whereby the applicant sells or offers units in real estate projects such as condominiums, hotels, resorts or dormitories to prospective buyers on the condition that the buyers shall contribute the units, whether mandatory or optional, to a rental pool managed and operated by the applicant or a third-party operator. The buyers in rental pool agreement are entitled to receive a share in profits based on agreed conditions, typically through a share in the income earned by renting out the units to third parties".

Section 2. Pre-filing activities of the registrant. All clearances from the pertinent operating departments[1] of the Commission shall be secured and/or completed prior to the filing of a registration statement with the Markets and Securities Regulation Department ("MSRD"):

2.1 All corporate actions and approvals necessary for the Offer are completed, classification as a real estate company is confirmed, and a Certificate of Good Standing from the Company Registration and Monitoring Department ("CRMD") has been secured;

2.2 Validation of the qualifications and non-disqualifications of its independent directors[2] and compliance with website template[3] from the Corporate Governance and Finance Department ("CGFD");

2.3 A Certificate of no pending case from the Office of the General Counsel ("OGC") and Enforcement and Investors Protection Department ("EIPD");

2.4 A Pre-Evaluation Clearance from the Office of the General Accountant ("OGA").

Section 3. Requirements for Financial Information and Disclosures. -The registrant shall provide the required *financial information and disclosures* in accordance with the Revised SRC Rule 68 and the Philippine Financial Reporting Standards and other relevant issuances of the Commission.

Pursuant further to the same Revised SRC Rule 68, the registrant company, through its Board of Directors or Audit Committee, if applicable, shall determine and ensure itself of the independence and competence of the company's external auditor.

Section 4. OGA Review.

4.1 Pre-evaluation Process. Registrant shall present to the OGA its financial statements for pre-evaluation in order to determine basic compliance with the Revised Rule 68, such as but not limited to:

4.1.1 The periodic presentation of the AFS[4] and IFS as prescribed under Part II, Section 5;

4.1.2 The prescribed age requirements under Part II, Section 5;

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[1] Company Registration and Monitoring Department (CRMD), Corporate Governance and Finance Department (CGFD), Enforcement and Investors Protection Department (EIPD) and Office of the General Counsel (OGC) to be submitted within 20-days after MSRD issuance of comment letter.

[2] Rule 38.6 Qualification and Disqualification

[3] SEC Memorandum Circular No. 11, Series of 2014

[4] Audited Financial Statements

If compliant/acceptable, OGA shall issue the pre-evaluation clearance to be submitted to the MSRD;

4.2 AFS Review Proper. AFS/IFS review shall commence upon submission of payment of the registration fee assessed by MSRD. The OGA shall review in details compliance with the Revised SRC Rule 68 and Philippine Financial Reporting Standards (PFRS);

4.3 The OGA shall inform the registrant the result of its review[5] through the issuance of a Comment and Response Sheet ("CRS"). The registrant shall submit its response to the CRS within five (5) days from the issuance of the same. Failure to response within the given period shall be deemed as a waiver of the right to respond thereto, and the OGA's findings shall become final. Once final, the result of the OGA's review will be referred to MSRD;

4.4 The registrant may request for a conference with the OGA only once;

4.5 In case of identified *material misstatements* that would warrant the re-issuance of financial statements, the OGA shall immediately notify the registrant, the CRMD and the MSRD of the said misstatement, without prejudice to any penalty that may be imposed due to deficiencies or deviation found;

4.6 CRMD shall prepare an assessment letter and registrant shall pay the penalty assessed by CRMD including any violation of the RCC and SEC guidelines on reportorial requirements. Failure to comply, would result in the suspension of the review by MSRD until payment of the fees and other dues collectible is made[6].

Section 5. Documentary Filing Requirements. The registrant shall email digital copies to msrdsubmission@sec.gov.ph in word and PDF format of the following for pre-processing review:

5.1 OGA Pre-Evaluation Clearance Form;

5.2 SEC RENT Pre-evaluation Checklist Form;

5.3 Form SEC RENT and Prospectus; and

5.4 All required Exhibits.

Section 6. Compliance with Application. If the application is accepted for processing by the MSRD, registrant shall submit two (2) sets of hard copies of all documents required under Section 5 above and shall:

6.1 Request for a copy of the Payment Assessment Form (PAF);

6.2 Pay[7] the assessed registration and other fees either online via the Electronic System for Payment to SEC (eSPAYSEC) or over the counter payment thru any branch of Landbank of the Philippines, debit or credit cards, digital wallets and other cashless payment options;

6.3 Scan and email digital copies of *any proof of payment* made to msrdsubmission@sec.gov.ph and secoga@sec.gov.ph as soon as available, to initiate the start of the 45-day review period, otherwise, processing will be held in abeyance until payment is made;

6.4 Secure from MSRD a copy of the Notice of Filing of the Registration Statement signed by the Director of MSRD and immediately cause the publication in two (2) newspapers of general circulation in the Philippines for two (2) consecutive weeks and submit copies of Affidavit of Publication to the MSRD as soon as available;

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[5] Compliance with financial reporting rules
[6] Rule 54.3 2015 SRC Rules - Enforcement of Administrative Sanction
[7] Review of application shall commence on the date of payment of registration fee

6.5 Upload digital copy of the Prospectus in the company's official website;

6.6 Any request for confidential treatment and/or Exemptive Relief, shall be simultaneously filed with the registration statement (if applicable);

6.7 In case of registration under Shelf Registration, submit letter of undertaking to pay the remaining registration fee not later than thirty (30) business days prior to the expiry of the three (3) year reckoned from the date of the effectivity of the registration statement.

Section 7. Delayed and Continuous Offering and Sale (Shelf Registration) – Securities which are intended to be issued in tranches at more than one instance, may be offered on a continuous or delayed offering for a period not exceeding three (3) years from the effective date of the initial shelf registration statement under which they are offered and sold.

For subsequent offering, registrant shall:

7.1 File an updated Prospectus;

7.2 Pay the assessed registration fee within seven (7) business days prior to commencement of the offer/sale based on the total registration fee payable per tranche of issuance and proportional to the issue value as required under Section 6.7 above;

7.3 Submit a Certification of no material change as prescribed in Annex "**A**";

7.4 Secure updated clearances required under Sections 2.2 and 2.3 hereof.

Section 8. Subsequent Offering. Subsequent offering in shelf registration after the initial tranche can only be made if:

8.1 The registration statement remains effective;

8.2 The registration statement is not subject to suspension or revocation orders under Section 13 or 15 of the SRC;

8.3 The registrant has timely filed reports required under *Section 16* hereof;

8.4 Neither the registrant nor any of its directors or officers fall into the categories of non-paying delinquent or disobedient parties defined under Rule 54.3.1 of the SRC IRR.

Section 9. Eligibility Requirements. In order to be eligible to subsequently offer securities, the registrant must comply with the following requirements:

9.1. The registrant must have complied with the reporting requirements of Rule 17 and 20 of the SRC IRR and the Revised Corporation Code for at least 12 calendar months immediately preceding the filing of the registration statement and have timely filed all required reports with the Commission during the same period;

9.2. The registrant must have uploaded in its official website all required reports specified above;

9.3. The registration statement and/or offer circular/supplement is not subject to any pending proceeding nor was the subject of any refusal order or stop order; and

9.4. The registrant is not a subject of any pending proceeding under Rule 53 of the SRC in connection with an offering.

Section 10. Incorporation by Reference. The registration statement may incorporate by reference information about the issuer, from its *previously filed reports and after the initial tranche offering* (shelf registration statements) effectivity *provided*; such information is readily available and downloadable from its official website.

Section 11. Underwriting Requirement and Plan of Distribution. No underwriting agreement shall be required for the registrant in relation to rental pool agreements.

Section 12. Other Applicable Requirements. - All other existing requirements under the SRC and the Revised Corporation Code (RCC) and their implementing rules and regulations, and other applicable laws, rules and regulations, circulars and orders of the Commission shall be strictly complied with.

Section 13. Forty-five (45) Day Review Period. The Commission shall review and declare the registration statement effective or reject the same within forty-five (45) days after the date of filing with MSRD, in accordance with the requirements of the SRC, RCC, and other pertinent issuances of the Commission.

13.1 The forty-five (45) day period shall commence on the date of payment of the assessed registration fee;

13.2 Within fifteen (15) days from commencement of the review period, the MSRD shall issue a comment letter outlining the findings, issues, and deficiencies identified in the documents submitted. The MSRD shall set a meeting with the registrant that shall take place within five (5) days from the issuance of the comment letter to discuss the findings, if necessary;

13.3 Within twenty (20) days from the issuance of the comment letter, the registrant shall submit its compliance by filing:

13.3.1 An updated Prospectus and any other documents in compliance with the comments of the MSRD;

13.3.2 A letter-reply specifying its responses to the comments;

13.3.3 A certified list of the changes made in the updated Prospectus;

13.3.4 All clearances required under Section 2.1 to 2.4 hereof (if applicable).

13.4 Should the registrant wish to request a meeting with the MSRD, it shall submit a written request at least two (2) days before the proposed date and within the twenty (20) days period. The request shall specify the agenda and include any materials that shall be presented in the meeting;

13.5 Not later than the forty-fifth (45th) day, the MSRD shall present before the Commission En Banc the registrant's application for its consideration based on the available information, compliance, and submission;

13.6 In case the registrant is allowed to further update the Prospectus prior the effective date, the forty-five (45) day review period shall recommence;

13.7 The MSRD shall immediately communicate to the registrant the decision of the Commission En Banc.

Section 14. Approval of Application. Upon favorable consideration by the Commission En Banc of the registration statement, the MSRD shall issue a pre-effective letter stating the conditions to be complied with.

Upon compliance with the requirements, the MSRD shall issue an Order of Registration and/or Permit to Sell Securities to the Public.

The sale of the securities via public offering shall commence within ten (10) business days from the date of the effectivity of the registration statement and shall continue until the end of the offering period or until the sale is terminated by the Issue. If the sale is not commenced within ten (10) business days, the registration statement shall be cancelled and all fees paid thereon forfeited.

A written notification of completion or termination of the offering shall be filed by the Issuer with the MSRD within three (3) business days from such completion or termination, and the notice shall state the number of securities sold.

Section 15. Rejection of Application. If the registration statement is on its face incomplete or inaccurate in any material respect or includes any untrue statement of a material fact required to be stated therein or necessary to make the statement not misleading, the Commission may reject such registration statement and refuse registration.

An Order of Rejection shall be issued if the registrant failed to fully comply with the requirements, or is found to be in violation of any of the provisions of the RCC, SRC and its IRR and the registration fee is forfeited in favor of the Commission.

Section 16. Reportorial Requirements. After the effectivity of the registration statement, the registrant shall submit digital copies to ictdsubmission@sec.gov.ph and copy furnish msrdsubmission@sec.gov.ph and upload the following in its official website:

16.1 a monthly report on the number of shares sold during the month and a running balance of the total amount raised since the start of the offer under SEC Form 17-C;

16.2 reports required under Rule 17[8] of 2015 SRC Rules ("SRC IRR");

16.3 reports required under Rule 23[9] of the 2015 SRC IRR;

16.4 reports required under Section 177[10] of the Revised Corporation Code to efast.sec.gov.ph

Section 17. Penalty Clause - Any violation of the requirements and conditions set herein, the RCC, SRC, its implementing rules and regulations, as amended, Financial Products and Services Consumer Protection Act, other laws, rules and regulations, circulars and orders of the Commission shall be dealt with and penalized accordingly without prejudice to criminal and administrative liabilities therein.

Section 18. Effectivity - This Memorandum Circular shall take effect immediately after its publication in two (2) newspapers of general circulation in the Philippines.

Makati City, Philippines

16 July 2024

EMILIO B. AQUINO
Chairperson

[8] Annual Report (SEC Form 17-A), Quarterly Report (SEC Form 17-Q) and Current Report (SEC Form 17-C)

[9] Reports to be filed by Directors, Officers and Principal Stockholders

[10] Audited Financial Statements, General Information Sheet, Director appraisal or performance report and the standards or criteria used to assess each director