

SEC Memorandum Circular No. 12 s. 2024 – Securing and Expanding Capital
in Real Estate Non-Traditional Securities (SEC RENT)

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1. Background

The Securities Regulation Code (SRC; Republic Act No. 8799) was enacted to, among others, ensure full and fair disclosure about securities, and minimize fraudulent practices in connection thereto. In order to achieve these objectives, the SRC regulates the selling and distribution of securities within the Philippines without first securing the proper registrations from the Securities and Exchange Commission (SEC), as well as imposing mandatory disclosures and other requirements from the issuer of such securities.



In furtherance of the above objectives of the SRC, the SEC issued SEC Memorandum Circular (MC) No. 12, series of 2024, to provide guidelines for securing and expanding capital in Real Estate Non-Traditional securities (RENT) which refers to the issuance of investment contracts, certificates of participation, profit-sharing agreements, and other forms of securities issued by real estate developers and/or managers in relation to rental pool agreements.

For those companies which are related to profit-sharing agreement scheme and a like in relation to real estate, this guideline is the one should be aware of.

2. What are 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.”

For those agreements applied the definition above, this guideline shall be applied.

3. Requirements for RENT issuers

The SEC requires the following for real estate developers or managers in relation to rental pool agreements:

- 1) Pre-filing activities – This refers to securing clearances from the SEC prior to the filing of a registration statement, including verification of qualifications of independent directors, and other compliance with general SEC requirements.

- 2) Financial Information and Disclosures – This refers to financial information and disclosures in accordance with the SRC Rule 68 and Philippine Financial Reporting Standards.
- 3) Compliance with Application – This refers to additional applicable requirements such as payment of registration fees, uploading of the Prospectus in the company website, among others.
- 4) Reportorial Requirements – After the effectivity of the registration statement, the registrant shall submit digital copies to SEC and upload the following to its official website:
 - a. Monthly report on number of shares sold during the month and a running balance of the total amount raised since the start of offer (SEC Form 17-C);
 - b. Reports required under Rule 17 (Annual, Quarterly, and Current Reports) of the SRC Rules (SRC IRR);
 - c. Reports required under Rule 23 (Reports filed by Directors, Officers, and Principal Stockholders) of the 2015 SRC IRR; and
 - d. Reports required under Section 177 (Audited Financial Statements, General Information Sheet, Director appraisal or performance report and criteria) of the Revised Corporation Code (RCC)

No underwriting agreement shall be required for the registrant in relation to rental pool agreements.

4. *Delayed and Continuous Offering and Sale (Shelf Registration)*

Securities may also be issued in tranches (e.g. in separate batches or phases) for up to a period not exceeding 3 years from the effective date of initial shelf registration.

In these cases, the MC also provides for additional requirements such as the submission of updated Prospectus, updated clearances, among others.

5. *What should companies do?*

Companies desiring to engage in the real estate activities and offer SEC RENT securities must be mindful of the registration requirements of MC No. 12 s. 2024 prior to offering such securities to the public.

Conversely, potential investors for SEC RENT securities should conduct their due diligence prior to investing to avoid fraud. Since reports and requirements by the registrants must be uploaded in their company websites, potential investors can benefit from the transparency required by the SEC of SEC RENT registrants.


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