



Financialisation of real estate products in Nigeria, implications under the investments and Securities Act 2025

Reginald C Karawusa¹, George R C Ibekwe², Chi Eric Nnadozie³

¹ Former Executive Commissioner Legal Securities and Exchange Commission, Nigeria

² Deputy Director Academics, Nigerian Law School, Nigeria

³ Deputy Director (Academic), Nigerian Law School, Nigeria

Abstract

At the very apex of securities and investments regulation in Nigeria is the Securities and Exchange Commission. The Commission draws its regulatory impetus chiefly from the Investments and Securities Act, 2025. The Act is replete with elaborate and intentional provisions for securities regulation, capital market development and investors protection. The Act defines securities to include investment contracts amongst others. Collective investment scheme typically exemplifies such contracts. This article argues that the marketing of luxury real estate products as an investible and income yielding products is an inadvertent marketing of securities within its expansive meaning as was laid down in the Act.

It is therefore the contention of the authors that such luxury real estate investment products should as a matter of compulsion and urgency be brought within the regulatory ambit of the Commission for the purposes of registration, regulation and accountability.

Keywords: Securities and Exchange Commission (Nigeria), Investments and Securities Act 2025, Collective investment scheme, Luxury real estate investment, Capital market regulation

Introduction

The capital market in Nigeria is one of the turbines firing the nation's economy and its long drawn but expected traction towards fiscal development and prosperity. The evolution of the capital market in Nigeria dates back to 1946 with the floatation of the first \$300,000 bond under the Nigerian 10-year development plan. Formalization of securities trading in Nigeria was birthed in the year 1961 with the establishment of the Nigerian Stock Exchange. The overriding aim was to ensure fair and orderly markets based on just and equitable principles in dealing in listed securities ^[1].

Then came the Capital Issues Commission in 1962, which acted as a regulator in the market ^[2]. The regulatory metamorphosis of the Capital Issues Commission to the Securities and Exchange Commission took place in 1977 thereby heralding the dawn of a new era in capital market ^[3]. The commission has continued to evolve ever since. The current legislation governing the capital market is the Investment and Securities Act of 2025 ^[4].

The commission has over time shown grit and vigor in the discharge of its mandate by showing up in deserved cases to demand registration of capital markets assets and as well as weaving the big stick in moments of infraction by operators and players in the market.

Collective investment schemes

This globally acceptable investment platform is best suited for retail investors in the capital market. Presently, there are over one hundred registered schemes in Nigeria with an aggregate monetary value of over N 1.4 trillion ^[5].

Collective bargaining investment schemes are broadly classified into open-ended and closed ended based largely

on the operational structure of the scheme. Most collective investment products are aligned with investment objectives. For the purposes of this work, the authors will remain focused on Real Estate Investment Trusts. These are closed ended CIS outlets for investment in high quality real estate real estate assets with expected returns earned from rental income of the real estate properties. So, it therefore follows that a body corporate incorporated for the sole purpose of acquiring intermediate or long-term interests in real estate or property development may raise funds from the capital market through the issuance of securities which have the following characteristics;

An income certificate giving the investor a right to share of the income of any property or property development.

An ordinary share in the body corporate giving the investor voting rights in the management of that body corporate and such other features as the SEC may prescribe ^[6].

A real estate investment company or trust maybe registered by SEC if;

- It is a body incorporated under the Companies and Allied Matters Act.
- It has a capital and reserve as prescribed by the SEC.
- It carries on business as a collective investment scheme solely in properties.
- It complies with the requirements prescribed by the SEC ^[7].

From the above, one can glean that the commission has overarching powers to register and regulate real estate products whose underlying objective is to earn income or returns from the use, holding and disposal of such products. It is therefore in the light of the above that we will background our discussion on the title of this work.

Developer Should Beware: Marketing of Luxury Real Estate Products Could Turn out to be Marketing of Securities Under the Nigeria's Investments and Securities Act 2025.

Nigeria's hospitality and real estate sectors continue to thrive with luxury apartments, condominium hotels (condotel) ^[8] units and high-end holiday resorts springing up in choice locations i.e. in Ikoyi, Victoria Island, Lekki in Lagos, Maitama and Asokoro districts in Abuja as well as other locations in the country. These luxury real estate units are marketed to the general public by real estate developers and hospitality brands.

What is disturbing is that rather than focus on the features, the amenities and the prices of these luxury units, developers, in their marketing materials, portray them as investments that would yield high returns. In the same vein, the developers appear to hold themselves out, as if they were investment advisers/funds managers advising buyers on investment products, rather than as realtors selling homes or lifestyle to buyers.

When people buy condotels, holiday resorts, strata units or other similar luxury real estate units, they own their individual units but give them out to the developer or a third-party operator affiliated to it to be collectively managed and rented out in a pool to guests on behalf of the owners when the units are not in use by them. In some cases, the owners are totally prevented from using them at all.

The rental income from the reservations is shared between the owners and the developer or its affiliate company in the agreed ratio. Alternatively, the owners may earn an agreed return on the investments on their units instead of rental income.

The purpose of this article is to call the attention of real estate developers and hospitality brands in Nigeria to the fact that they may be crossing the line from marketing real estate to marketing securities which is regulated by the Securities and Exchange Commission (SEC).

Risks associated with investment in real estate

Investments in luxury apartments, condotel units, and other resort units could be risky for the investor ^[9]. These risks may, however, not be disclosed, or downplayed by developers or promoters. The anticipated rentals or returns on investments could be overstated and the high management fees not properly highlighted.

How do securities regulators view the sale of condotel units in other jurisdictions?

The offer/sale of condotels and other real estate units coupled with rental pool or rental management arrangements if unregistered or an exemption is not obtained from the regulator, under the respective securities laws, is unlawful in many jurisdictions.

United States

The US financial watchdog, the US Securities and Exchange Commission, typically looks at substance over form when assessing the nature of products offered to investors. In the 1946 seminal case of *SEC v W. J. Howey* ^[10], the SEC, asserted that a transaction which ordinarily looked like the sale of a real estate, was indeed an investment contract and thus a security under the Securities Act 1934. The promoter in Florida sold tracts of citrus groves and advised investors

that the purchase was not economically feasible unless they entered a service contract with an affiliate of the promoter whereby the affiliate provided services in cultivating, developing, harvesting and marketing the crops produced in the tracts, with the net profits distributed to the investors/tract owners.

In deciding on what constitutes a security or an investment contract regulated by the SEC, the Supreme Court, focused on the "economic realities" of the investment, and held that an interest (e. g. a real estate interest) will be regarded as a security if all of the following are present:

1. There is an investment of money;
2. The money is invested in a common enterprise; and
3. There is an expectation of profits solely from the efforts of the promoter or a third party. This has come to be known as the 'Howey Test'

With the Howey Test, condotel and other real estate investments, if marketed with primary emphasis on return on investment, guaranteed rental income or profit-sharing promises, may become 'securities' under the SEC's regulatory purview.

Hong Kong

In Hong Kong, the Securities and Futures Commission (SFC) threatened legal action against the developer of a Hong Kong hotel, *The Apex Horizon* for what it considered as the sale of unregistered securities. All 360 rooms on offer in the hotel had been sold, but some buyers seeking to resell their units found that they did not acquire exclusive possession and the rooms could not be used as residences. The developer Cheung Kong (Holdings) Ltd settled with the securities regulator, and unwound the sale of individual units. The SFC asserted that the offer was an invitation to the public to acquire an interest in, or to participate in, a collective investment scheme (CIS), the marketing of which required prior SFC approval, which was neither sought nor obtained ^[11].

Philippines

In the Philippines, the SEC similarly, issued a cease-and-desist order against Robert John Sobrepeña ^[12] the developer of *Camp John Hay* and his corporations CJH Development Corp. (CJHDC) and CJH Suites Corp. (CJHSC) and requested them to freeze all investment/lease transactions involving two major hotel facilities over the sale of what it deemed as "securities" with condotel units as underlying assets.

United Kingdom

In the UK, the regulator, the Financial Conducts Authority (FCA) brought legal proceedings against *Asset Land Investment Plc* ^[13] alleging that the company and its promoters who were promoting and operating collective investment schemes without authorization. Though the *Asset Land* case was a land bank scheme and not an offer/sale of condotel units, the FCA would reach the same conclusion in the case of the sale of condotel and other real estate scheme exists.

Regulation of Investments and Securities business in Nigeria

In Nigeria, the Investments and Securities Act (ISA) 2025 is the principal statute which empowers the SEC to regulate

investments and securities business in Nigeria ^[14]. The ISA 2025 has redefined 'securities' to include investment contracts ^[15] as section 2 of the US Securities Act 1934. Under section 357 ISA 2025 "securities" means —

- a. debentures, stocks or bonds issued by a government,
- b. debentures, stocks, shares, bonds, notes issued by a body corporate, any right or option in respect of any such debentures, stocks, shares, bonds or notes,
- c. virtual and digital assets,
- d. investment contracts,
- e. commodities, futures, contracts, options and other derivatives, or
- f. any other instrument deemed as securities which may be transferred by means of any electronic mode or which may be deposited, kept or stored with any depository or custodian;

Sections 150 and 357 ISA 2025 further define a 'collective investment scheme' as;

"a scheme or arrangement in whatever form... under which members of the public or qualified investors are invited or permitted to invest money or other assets in a portfolio, and in terms of which —

1. Two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest,
2. Such contributions are pooled and such portfolio of the scheme is managed as a whole,
3. Such contributions entitle such investors to hold a participatory interest in the portfolio of the scheme through shares, units or any other form of participatory interest, or
4. Such investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed, but not a collective investment scheme *authorized by any other Act.*

Luxury apartments, condotels units, and other real estate projects as advertised and sold by some developers in Nigeria qualify as securities regulated by the SEC because the conditions in the definition of collective investment scheme in sections 150 and 357 of the ISA 2025 do exist:

Firstly, members of the public are invited or permitted to invest money: The adverts in newspapers, magazines, kiosks at the airports, billboards or online portals by the developers of luxury real estate units invite members of the public to key into the projects as investment opportunities and the economic benefits are emphasized.

Section 29 Securities and Exchange Commission Decree no 29 1988 defined 'securities' as 'any note, stock, treasury stock or certificate, government bond, debenture, participation in any profit sharing agreement or in any oil or gas or other mineral royalty or lease, any subscription, transferable share, investment contract, certificate of deposit for security, or rights or interest (described whether as units or otherwise) under any unit trust scheme, or in general, any instrument commonly known as 'security' but shall not include currency or any note, draft bill of exchange or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likely limited'

Secondly, two or more persons contribute money or other assets and hold a participatory interest in a portfolio through shares, units or any other form of participatory interest: Subscribers are issued units, lots or other participatory interest in the portfolio (units in a rental pool/management arrangement) based on the monies they contribute.

Thirdly, the investors share the risk and benefit of investment in proportion to their participatory interest in a portfolio or on any other basis determined in the deed: The rental pool agreement enables purchaser to share the risk and/or benefit in proportion to their participatory interest.

Guidelines, regulations, statements issued by securities regulators to developers

Securities regulators in other jurisdictions such as the United States, Hong Kong, Quebec Canada Australia and Philippines have issued releases, circulars or regulations to appropriately guide developers of real estate units to navigate the legal hurdles in structuring their products to remain within real estate or hospitality sector and not cross into the regulated sphere.

The US SEC release ^[16] in 1973 acknowledged the uncertainty about when offerings of condominium and other types of similar units could be considered to be offerings of securities and advised that:

1. Developers should always stress to buyers that the condominium units are for personal use.
2. Emphasis should not be made on the investment purposes or likely profits when selling condominium units.
3. The purchase agreement for the condominium units and the rental and/or management agreement should not be offered as part of a single package.
4. If there is any rental or management agreement, it must be signed well after the sale of the units and should not be used as an inducement to sell condo units ^[17].
5. Investment factors or rental and/or management agreements should not be emphasized in any marketing materials, to avoid such marketing materials from being used as evidence that the condominium offering was an investment like offering or package.

The SEC has also issued *No Action Letters* to developers seeking further clarification on the release ^[18].

The SFC Hong Kong (2013), ^[19] *Autorité des marchés financiers* (AMF) Quebec Canada (2016) ^[20], Australian Securities and Investments Commission (2017) ^[21] have issued statements and regulatory guides for operators and promoters of properties that are, or are proposed to be, managed for investors.

The Philippines SEC is the latest in 2024 to issue its Circular ^[22] on the sale of condotels, rental pool assets, and other real estate investments with a view to safeguarding investor interests amidst the growing trend of developers offering investment returns.

Conclusion and recommendations

Section 158(1) of the Investments and Securities Act (ISA) 2025 clearly prohibits any person from directly or indirectly dealing in units or participatory interests of a scheme unless such interests have been duly registered with the Securities and Exchange Commission (SEC). Violations attract significant penalties, including fines of not less than

₦5,000,000 and ₦100,000 for each day the infraction continues [Section 158(4)].

Similarly, Section 61(1) prohibits any person from operating in the Nigerian capital market or engaging in investment and securities business without proper registration. Non-compliance could result in criminal liability—fines of not less than ₦5,000,000 or imprisonment for a minimum term of five years [Section 61(4)].

Legal Implications

These provisions underscore that offering or selling collective investment schemes without SEC authorization is unlawful. Moreover, engaging in investment-related activities without SEC registration, regardless of the sector, is equally a violation of the Nigeria securities law.

Strategic Options for Developers

Real estate developers and hospitality brands must evaluate their business models and marketing strategies to ensure compliance; two options are available to them:

Option 1: to restructure their offerings to avoid such offerings falling under the legal thresholds of an investment contract or collective investment scheme under ISA 2025.

Option 2: to apply to have such offerings registered by the SEC or seek an exemption if applicable.

In 2020 the SEC Nigeria engaged the promoters of *the Oceanna Hotel Apartments* ^[23] condominium on the need to restructure the marketing and sale of their apartment units to avoid crossing the line. However, the SEC is not yet to issue a general publication in this regard.

Need for Regulatory Clarity

To enhance compliance and awareness, the SEC Nigeria should issue formal guidance tailored to developers and promoters in the luxury real estate space. This could include:

1. Clear indicators to distinguish between real estate and securities offerings.
2. Best practices for advertising and sales that avoid triggering securities regulations.
3. Templates or models similar to the U.S. SEC Release No. 5347 and similar circulars by other securities regulators for structured real estate offerings.

Balancing Regulation and Innovation

Developers often hesitate to pursue SEC registration due to concerns over cost, delays, and administrative burdens. However, a modern regulatory framework should balance:

1. Investor protection: ensuring transparency and accountability.
2. Operational efficiency: reducing excessive compliance costs or bottlenecks.
3. Market growth: allowing legitimate innovations and offerings that drive economic development.

Comparative Best Practices

Other jurisdictions such as the U.S., Hong Kong, Philippines, Canada, and Australia have issued detailed circulars and guidance for real estate projects with investment features (e.g., condotel units, strata units and other rental pool arrangements). Nigeria can adopt similar instruments, ensuring that:

1. Sales representations emphasize residential use over investment potential.

2. Rental or management agreements are not bundled as inducements for purchase.
3. Any income guarantees or profit-sharing terms are disclosed in accordance with SEC regulations.

The SEC must also take care to ensure that its processes are not cumbersome and that it does not impose excessive regulatory charges. Such charges, if passed by developers to buyers could lead to higher prices turning off investors and, potentially the risk of poor sales. At the same time, the protection of investors and creation of a transparent, fair and efficient market are the primary concerns of the SEC.

What is required for the growth of this segment of the real estate and hospitality sectors is proper engagement between the regulator and the industry to ensure investor confidence which will be enhanced and this will ultimately lead to growth.

The purpose of regulation is not to stifle, but to facilitate the growth of every aspect of the Nigerian economy. After all, the mission of the SEC Nigeria is to develop and regulate a capital market that is dynamic, fair, transparent and efficient, to contribute to the nation's economic development

References

1. Established under the Lagos Stock Exchange Act of 1960.
2. The commission remained an appendage of the Central Bank of Nigeria.
3. Note Decree No 71 of 1979.
4. The explanatory memorandum contains as follows " This Act repeals the Investment and securities Act, no 29 of 2007 and enacts the Investments and securities Act of 2025, to establish the Securities and Exchange Commission as the apex regulatory authority for the Nigerian capital market as well as to regulate the market to ensure capital formation, the protection of investors, maintenance of fair, efficient and transparent market and reduction of systemic risks.
5. According to data collected by the SEC. This was cited on page 2, "SEC New Rules on Collective Investment Scheme- Forging ahead": G Elias and Co. Accessed on the 12th day of August, 2025 <https://www.gelias.com>.
6. See section 191(1) ISA 2025.
7. See section 192 ISA 2025
8. Condotel, according to The Free Dictionary is a relatively recent concept involving a melding of a resort hotel with condominium ownership. It initially became popular after September 11, 2001, when it got difficult to obtain financing of more than 50 % of the cost of acquisition or development of a hotel property. To raise the additional necessary capital, developers sold individual units to investors and users, with the promise to rent the units to hotel guests and pay over profits to the individual owners. In recent years the practice has become less common with regular hotels, but remains strong with resort developments. The SEC, and several plaintiffs' law firms, have recently taken the position that such relationships involve the sale of securities, thereby requiring registration, disclosure, adherence to strict accounting standards, and many other requirements
9. A few of the adverts read as follows:

10. 'Return on investment on the Oceanna Hotel Apartments give an average of 29% per annum which include average yield of 14% and 15% capital appreciation.
11. Investment in other money market instruments – Treasury Bills, Government Bonds and Time Deposit give 15.8%, 13.5% and 12% returns respectively which are lower than the 29% return obtainable in The Oceanna Hotel.
12. Based on the above, investment in the Oceanna Hotel Apartments gives higher returns.' Grenadines Homes
13. 'By investing in Sujimoto luxury real estate, investors can tap into the growing demand for high-end properties in Nigeria, with the potential for high ROI and long-term capital appreciation. The Leonardo By Sujimoto project offers a unique opportunity to be part of a landmark development that is set to redefine luxury living in Nigeria. With its innovative design, prime location, and unmatched amenities, this project is poised to deliver exceptional returns for discerning investors'. Sujimoto
14. (c) 'High Investment Yields. We provide our investors with unbelievable annual interest rates and also provides buy-to rent clients appreciable properties with unrivalled annual rental returns on their investments.' Periwinkles
15. 'At Cruxstone Development and Investment Limited, our expertly selected properties are designed to deliver exceptional returns, with a minimum of 10% per annum' Cruxstone
16. (e) 'investors can anticipate a great deal. Along with its excellent location, our world class hospitality management team is dedicated to delivering top-notch service that will enhance the value of each investment,
17. Capital appreciation is expected to outperform traditional residential investments. Extensive research carried out by our professional hotel consultants suggest that gross rental income will be in double-digit figures, making it an exciting, modern and dynamic hands-off investment.' The Autograph Plus
18. There are risks in investing in luxury real estate at every stage:
19. while under construction, there may be delay in the completion date or the project may even not go forward after investors have made the investment resulting in loss of value of funds invested or in missing out on other opportunities while funds are tied up.
20. the value of the units during pre-construction stage could soar before the project gets built and the market may then dip such that investors may have to wait until the market comes back in order to get the huge appreciation anticipated.
21. after construction and the property is operational, the unit bought could generate less revenue than anticipated if new competition comes into the market. Seasonal fluctuations, tourism trends and market conditions also impact returns.
22. maintenance and upkeep of many units on the property could suffer if there's any misapplication or mismanagement of the funds.
23. high management fees and other expenses could reduce expected returns.
24. Securities and Exchange Commission v. W.J. Howey Co., 328 U.S. 293 (1946)
25. According to the SFC, the key elements of a CIS in the offer, included the fact that the day-to-day management of the hotel was to be in the hands of a separate operator appointed to operate the hotel for the buyers, and that the hotel operator would control key functions to manage and supervise the hotel, including allocation of guests to rooms. see also Proskauer Rose Hong Kong – applying securities laws to sales of hotel units
26. The residential units in the condotels were offered for sale to the general public in two schemes. The first, was a straight purchase/sale contract where buyers paid for units lump sum or on installment basis and enjoyed benefits of full ownership, subject to payment of maintenance dues and utility fees. The second, was a sale of units with an added option of a "leaseback" or a "money-back" arrangement in which buyers paid for the units and, then, surrendered possession to the management of CJHDC or CJHSC. The corporations intended to create a pool of the units to offer them for billeting under the management of the hotel operated by the Camp John Hay Leisure Inc. for a period of 15 years with a renewal option for the same period or until 2046. The buyers who choose the second scheme, the "leaseback" arrangement were to receive either a proportionate share in 70% of the annual income from the hotel operation of the pooled rooms or a guaranteed 8% return on their investment. The SEC considered the "leaseback" or "money-back" arrangements offered to the public to be investment contracts and thus securities under the Philippines Securities Regulation Code. The Supreme Court upheld the cease-and-desist order issued by the SEC against CJHDC and CJHSC for selling unregistered securities and affirmed the authority of the SEC to determine what instruments are securities as it requires the technical knowledge and expertise of the regulator. SEC vs Sobrepeña <https://tribune.net.ph/2024/07/24/sec-issues-guidelines-regulating-rental-pools> see also High court backs SEC vs Sobrepeña Sale of unregistered securities backed by condotel units in Baguio By: Doris Dumlao-Abadilla - Business Features Editor / @philbizwatcher Philippine Daily Inquirer / 12:13 AM January 16, 2017
27. Asset Land promoted and sold plots of land in six locations in the UK. Investors were persuaded to buy individual plots of land for between £7,500 and £24,000 with the promise that the land would increase in value if the land got planning permission or was re-zoned. The Supreme Court held that, although investors were the legal owners of their individual plots, in reality the arrangements of the scheme were that investors did not have control over their investment and Asset Land was the central operator of the scheme. The Supreme Court confirmed that Asset Land had been operating an unauthorized collective investment scheme in the course of operating the land bank.
28. Asset Land Investment Plc and another v The Financial Conduct Authority
29. section 3(3) of the Investments and Securities Act 2025
30. Section 357 of the ISA 2025 has brought back the term 'investment contract' in the definition of securities previously in the SEC Decree 1988.

31. US SEC Release No. 5347- Guidelines as to the Applicability of the Federal Securities Laws to Offers and Sales of Condominiums or Units in A Real Estate Development
32. In *Salameh v. Tarsadia*, the Ninth Circuit Court of Appeals found that the 8-15-month gap between the execution of the purchase agreement and the "Rental Management Agreements" underscored the holding that the transactions were separate and, therefore, the plaintiffs were not offered a security.
33. In a 2002 no action to letter *Intrawest Corporation*, the SEC stated that *Intrawest's* sales and rental model did not create a security because the promotion and sale of units did not emphasize any economic benefit to the purchaser derived from managerial efforts or rentals. *Intrawest* had represented that:
 34. Under no circumstances would purchasers be led to believe that they would profit from unit ownership except for property value appreciation;
 35. The rental management company would only provide information in response to specific questions;
 36. *Intrawest's* rental management program would be completely separate from the *Intrawest* sales program,
 37. Sales representatives would not receive additional compensation for unit sales tied to rental management agreements, and
 38. *Intrawest* would not discuss the terms of any rental management agreements until a purchase and sale agreement had been executed.
39. Release dated 27 August 2013, SFC outlines regulation of collective investment schemes Also, in June 2016, SFC updated its Frequently Asked Question on "Offers of Investments" under the Securities and Futures Ordinance. Appendix 1 was added to the Frequently Asked Question to provide guidance on CIS involving interests in real estate.
40. On November 25, 2016, the *Autorité des marchés financiers (AMF)* published a draft regulation titled Regulation respecting Real Estate Prospectus and Registration Exemptions (draft Regulation) which sets out a framework for certain types of real estate projects, including hotel units and condominium projects that offer a rental management agreement allowing owners to earn income from their units when they are not using them. The following questions are necessary to determine whether a real estate project is subject to the requirements of the Securities Act: are there restrictions on the periods during which the purchaser can occupy a unit? are representations made to the purchaser highlighting the economic benefits of purchasing a unit, such as projected financial income or potential rental income? are income or rent guarantees or other undertakings given in connection with the sale of the unit?
41. ASIC Regulatory Guide 140 explains: (i) how the provisions of the Corporations Act 2001 on managed investment schemes apply to arrangements involving real property, including under strata or community title (e.g. units in a serviced apartment, hotel, motel or resort complex), and certain freehold titles or leasehold interests (referred to in this guide as 'strata schemes'); and (ii) the conditional relief given, in ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869, to operators and promoters of strata schemes, including management rights schemes, from the managed investment, Australian financial services (AFS) licensing, product disclosure and hawking provisions of the Corporations Act.
42. According to RG 140 a strata scheme that has more than 20 members generally must be registered with ASIC as a managed investment scheme unless it is exempted. A strata scheme with 20 members or less does not have to be registered unless: (a) the promoter is in the business of promoting managed investment schemes; or (b) the scheme is aggregated with others because of a determination the ASIC has made under s601ED(1)(c) and 601ED (3). (see RG 140.42 and RG 140.43)
43. SEC Philippines Memorandum Circular 2024. The circular addressed rental pool arrangements and covered the issuance of investment contracts, certificates of participation, profit-sharing agreements, and other forms of securities by real estate developers. Real estate developers or managers are required to obtain approvals from several departments within the SEC, to sell rental pool assets.
44. They must also first secure a certificate of good standing, pre-evaluation clearance, and certificate of no pending case from the SEC's various departments before filing a registration statement for the securities it will offer to the public.
45. The Oceanna project is a mixed use commercial and residential property comprising 4 towers. Before the SEC's intervention, the information on the website of "The Oceanna", showed that there are three ways of keying into the project;
46. Sole Ownership: a more conventional ownership structure where an investor solely owned a studio, 1- or 2-Bedroom Apartment and could use it as deemed fit, either living in it or using it for investment. If an investor bought into the Oceanna for investment purposes, the ROI on the Hotel Apartments gave an average of 29% per annum which included average yield of 14% and 15% capital appreciation. The investment was benchmarked with investment in other money market instruments – Treasury Bills, Government Bonds and Time Deposit give 15.8%, 13.5% and 12% returns respectively which are lower than the 29% return obtainable in The Oceanna Hotel.
47. Oceanna Bonded Investment: gave the investor the opportunity to co-own a Hotel Studio unit with a maximum of 17 subscribers. Each studio consisted of 17 Lots and an investor could buy a minimum of 1 Lot. The ROI on the Hotel Apartments gave an average of 27% per annum which included average yield of 14% and 15% capital appreciation. also benchmark this investment with return in money market instruments.
48. Oceanna Co-ownership Scheme: The Co-ownership Scheme allowed an investor to share ownership of a property jointly with other investors based on the week(s) bought and each owner could use the property for the specified period of time each year.