



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



REAL ESTATE LAW / THE NEW CONDOMINIUM RULES

9th January, 2018

MAIN REASONS FOR THE NEW FRAMEWORK

- Presently, an apartment building with an elevator is marketed as a “condominium”, but:
 - Contrary to land, there is no registration system for the apartments (units): Title check difficult - what is “title to an apartment”, anyway?
 - Banks usually do not accept apartments as security
 - Long-term bank loans for the purchase of apartments not available
 - Foreigners cannot own apartments



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MAIN REASONS FOR THE NEW FRAMEWORK

- **Market currently down: Developers say that they could sell more (high-end) apartments if the market is expanded by making long-term bank loans available and allowing foreigners to buy**
- **Currently, developers can theoretically start selling apartments without having started construction and without funds in their bank account (although we suppose that contractor licenses would contain restrictions)**
- **Building management presently not regulated**



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NEW RULES

- **Condominium Law (Pyidaungsu Hluttaw Law No. 24/2016 dated 29 January 2016)**
- **Condominium Rules (Ministry of Construction Notification No. 267/2017 dated 7 December 2017)**
- **In order to implement the law and the rules, the Ministry of Construction still has to set up Regional and State Management Committees (and request the Union Government to set up the Union Territory Management Committee) and the Condominium Registration Office**



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NEW RULES ONLY TO APPLY TO SOME SITES

- “Condominium” under the new rules:
 - Building with at least 6 floors standing on land with an area of at least 20,000 square feet
 - Land must be registered as “collectively owned land”
 - Units must be separately registered
- No such registrations yet, as Management Committees and Condominium Registration Office still to be established →
No “official” condominiums yet



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TYPES OF LAND

- **Contradiction:**
 - **Condominiums must be built on “collectively owned land” (section 9 CL)**
 - **Most land on which “condominiums” are presently being built is not freehold land, but either grant land or land leased from a government entity under a BOT contract**



TYPES OF LAND

- **Freehold land:** Right to use for an unlimited term; no rent to the government; confiscation only for a public purpose against adequate compensation; may be sold, otherwise transferred, mortgaged, bequeathed → Full land ownership
- **Grant land:** Long-term lease from the government (usually, 30, 60 or 90 years); nominal rent to be paid; confiscation prior to expiry only for a public purpose against adequate compensation; renewal in practice almost automatic; grant may be sold, otherwise transferred, mortgaged, bequeathed → Close to full land ownership



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TYPES OF LAND

- **BOT land:**
 - Lease for (usually) 50+10+10 years from a ministry, government department or the military
 - Rent: Up front land use premium and annual rent (easily billions of kyats)
 - After the expiry of the lease, land and building are to be handed over to the government
 - Not comparable to land ownership
 - **Risks for purchasers of apartments (units): Inherent expiry date and corresponding loss of value; developer may stop paying the annual rent**



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TYPES OF LAND - EFFECTS OF CONVERSION

- Conversion to “collectively owned land” does not seem to change the original nature of the land (Rule 27; in spite of section 17 CL):
 - Freehold land: Unit owners collectively own the land
 - Grant land: Unit owners collectively hold the grant; they are collectively responsible to pay the nominal rent (Rule 54 (f)) and renew the grant (Rule 57 (z7) (1))



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TYPES OF LAND - EFFECTS OF CONVERSION

- **BOT land: Law and Rules are rather tight-lipped, but we think (in spite of section 17 CL): Unit “owners” collectively become lessees of the land (instead of?/in addition to? the developer) and are collectively responsible to pay the annual rent (Rule 54 (f)) and renew the lease (Rule 57 (z7) (1))**

We think that this is an unacceptable risk for the unit “owners” as the purchase price for the units would have been calculated to include the land rent. If the developer pays off the entire future land rent prior to the conversion, this risk is avoided.



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CONVERSION PROCEDURE

- **Freehold land/grant land:**
 - **Forms available**
 - **Current owner or developer to register an affidavit or oath with the Registration of Deeds Office to convert the land to “collectively owned land” (Rules 18, 19). Management Committee then to instruct the Condominium Registration Office to register the land as “collectively owned” (Rule 22).**
 - **Stamp duty: 6% (Yangon)/4% (outside Yangon) of the land value; 0.2% fee at Registration of Deeds Office; fee at Condominium Registration Office still unknown**



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CONVERSION PROCEDURE

- **BOT land:**
 - **Union Government approval required (section 15 (c) CL)**
 - **No forms available**
 - **Developer to obtain permit to construct the condominium and to register the land as collectively owned at the Condominium Registration Office with the approval of the Management Committee (Rule 21).**
 - **Stamp duty: 6% (Yangon)/4% (outside Yangon) of the “value of the transfer”; fee at Condominium Registration Office still unknown**



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OBTAINING A DEVELOPER LICENSE

- Application to be filed with the respective Management Committee
- Among others, evidence of past work experience and tax payment required if the applicant is “an individual or organisation” (Rule5 (a) (7), (8)) - if the applicant is a company, partnership or group of individuals?
- License term: 5 years
- Fees: Still unknown



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OBTAINING A DEVELOPER LICENSE

- **Foreigners and foreign companies can only be “co-developers” (Rule 2 (d)). How does this square with the fact that foreign participation in the “development, sale and lease of residential apartments and condominiums” occurs through the establishment of a joint venture company (MIC Notification 15/2017) which would act as the developer?**



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OBTAINING A PERMIT TO ESTABLISH A CONDO

- Permit to establish a condominium can be applied for at the same time as the developer license if the applicant is an “individual or organisation” (Rule 5 (a) (9)) - if a company, partnership or group of individuals?
- Application to be filed with the respective Management Committee
- Rule 14 contains a long list of requirements
- Fee: Still unknown



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SELLING CONDO UNITS

- Developer may start pre-sale after 30% of the foundation work has been completed
- Interestingly, unit registration and unit registration certificates become only available after the developer has obtained a building completion certificate (Rule 39) → Significant period in which units can be traded without registration - why?
- Condominium Registration Office issues a registration certificate for each unit to the developer after issuance of building completion certificate (Rule 40)



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SELLING CONDO UNITS

- Once the purchase price for a unit has been paid in full, the developer and the purchaser shall together register the instrument of transfer at the Condominium Registration Office (Rule 40); Condominium Registration Office then to “sign and stamp the unit registration certificate” (Rule 41).
- Stamp duty: 6% (Yangon)/4% (outside Yangon) of the purchase price
- 5% (we think) commercial tax



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SELLING CONDO UNITS

- If buyer cannot prove that he paid the purchase price from taxed income: 15, 20 or 30% income tax to be paid by the buyer
- Apparently, no registration fee
- Fine for not registering a transfer of ownership: Ks. 1,000,000 - 2,500,000 (section 34 CL)



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SELLING CONDO UNITS

- Resale:
 - Seller to register the instrument of transfer with the Condominium Registration Office within 30 days (Rule 45 (a)); Condominium Registration Office then to “sign and stamp the unit registration certificate” (Rule 41)
 - Stamp duty: 6% (Yangon)/4% outside Yangon) of the purchase price
 - No commercial tax if seller does not sell units as a business



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SELLING CONDO UNITS

- If buyer cannot prove that he paid the purchase price from taxed income: 15, 20 or 30% income tax to be paid by the buyer
- Seller: 10% capital gains tax
- Registration fee to be paid by the seller: Ks. 20,000, 30,000 or 50,000 depending on the purchase price
- Fine for not registering a transfer of ownership: Ks. 1,000,000 - 2,500,000 (section 34 CL)



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EFFECTS OF A UNIT REGISTRATION CERTIFICATE

- Irrefutable proof of unit ownership (Rule 41)
- May be offered as security for a bank loan (Rule 41) akin to a land grant certificate



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CONVERTING AN EXISTING BUILDING TO A CONDO

- Conversion of an existing building is possible, section 12 CL and Rule 20
- Limited guidance as to the procedure, but the developer would have to (i) convert the land to collectively owned land and (ii) apply for a developer license and (iii) a permit to establish a condominium
- We think that the developer would also have to track down the current unit owners to register them with the Condominium Registration Office - would they cooperate if there is tax exposure?



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CONVERTING AN EXISTING BUILDING TO A CONDO

- Benefit for a developer from the conversion if all the units have been sold already?



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FOREIGN OWNERSHIP OF UNITS

- Up to 40% of the total floor area of a condominium may be sold to foreigners (prior enquiry with the Condominium Registration Office as to whether the ratio is exceeded is required)
- “Foreigners” = probably, only individuals, not companies
- Unit ownership limited to the “term of the condominium” (Rule 36)
- Foreign ownership in the land?



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OTHER RESTRICTIONS ON THE SALE OF UNITS

- Developer must sell at least 75% “of the units” (Rule 35)
- No buyer may acquire more than 25% “of the units” (Rule 37)



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MIXED USE DEVELOPMENT

- Possible to use units for commercial purposes if:
 - the type, area structure and total number of condominiums used for commercial purposes is reported in the application for the permit to establish condominium (Rule 14 (c) (2));
 - the units for commercial purposes are in separate floors from the residential units with separate entries and exits (Rule 14 (c) (1));



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MIXED USE DEVELOPMENT

- the architectural design prevents annoyances to residents if the commercial use includes restaurants (Rule 14 (c) (3));
- the consent of the unit buyers has been obtained in advance (Rule 31) or the owners of neighbouring units have agreed (Rule 57 (z4))



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FINANCING

- Effects of the conversion of land to collectively owned land on pre-existing mortgages unknown
- Can foreign banks finance the purchase of a unit?



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MANAGEMENT OF A CONDOMINIUM

- Developer shall “take care of the condominium during the construction period and for one year after completion of construction. Even if the one year period is over, he shall take care if a temporary committee has not been formed.” (Rule 48 (a))
- Co-owners currently living in the units shall elect a temporary management committee as long as not more than 30% of the units have been sold (Rule 49 (a))



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MANAGEMENT OF A CONDOMINIUM

- As soon as more than 30% of the units have been sold, the temporary management committee shall form the condominium association in which all co-owners are members and draft its constitution with the consent of more than 50% of the co-owners (Rule 51).
- The temporary management committee shall then proceed to appoint the executive committee according to the constitution of the association (Rule 51, 55 (a)).



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MANAGEMENT OF A CONDOMINIUM

- The executive committee is responsible for the management of the condominium. It is elected every two years at the annual meeting of the association and can be dissolved at any time with the consent of 75% of the members (Rule 55 (b), 54 (b)).
- Alternatively, 75% of the members may appoint the developer to manage the condominium (Rule 75).



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MANAGEMENT OF A CONDOMINIUM

- The executive committee shall make and announce the rules to be complied with by the members and the residents of the condominium with the approval of the annual meeting of the association (Rule 57 (a)).
- Non-compliance with these rules may theoretically lead to criminal prosecution (Rule 54 (h), section 33 CL - fine: Ks. 1,000,000 - 5,000,000)



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MANAGEMENT OF A CONDOMINIUM

- Contributions to be paid by the members are set by the executive committee with the approval of the annual or special meeting of the association (Rule 57 (b)).
- Contributions are in particular contributions to a service fund, maintenance fund and emergency fund (Rule 63). The total amount is split among the unit owners according to the percentage of the total floor area sold that is occupied by their respective units (Rule 14 (d)). A different ratio may apply if a unit is used for commercial purposes (Rule 57 (b)).



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MANAGEMENT OF A CONDOMINIUM

- The executive committee may outsource the maintenance of the condominium to professional service providers (Rule 73)



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