

Condominium Law approved, an inroad to foreign ownership of real estate in Myanmar

Finally, the long awaited Condominium Law is passed by Pyidaungsu Hluttaw but the questions remain on everyone's breath: "Can all developers take advantage?" and "Can all foreigners now own a piece of Myanmar?"

What sort of building qualifies as a "Condominium"?

The building has to be a high-rise building with more than six storeys which are built on collectively owned land. The building needs to consist of housing units which are defined as apartments constructed and partitioned as individual units to be utilized for living, or for other specifically approved purpose. It is unclear whether a mixed used development will be approved as a Condominium.

Does every high-rise residential building qualify?

The developer must in the first instance successfully register documents with the relevant condominium registration officer appointed by the Ministry of Construction ("**Registrar**"). The developer is required to invest a prescribed minimum capital and to obtain a business licence issued by the relevant state/region government (acting through specially constituted management committees) in order to pursue such registration. Concomitantly, the land has to be registered as collectively owned land with the Office of Registry of Deeds and Assurances under the Ministry of Agriculture and Irrigation. This is intended to vest collective ownership of the land in the respective legal title holders of the housing units within the Condominium.

Can any land register as collectively owned land?

The land must be of a type which may be utilized for housing development under prevailing laws; must be such the current landowner has transferred, or is able to transfer ownership of, the land into collective ownership; and must conform to the specifications prescribed by the relevant authorities for urban planning. Small parcels of land do not qualify and the land area must be 20,000 square feet and above. The question has arisen whether developments constructed on land which is under long term lease from a government authority pursuant to a BOT arrangement qualifies for registration under the Condominium Law. We are of the view that the law does not expressly exclude such land, but ultimately the government authority which is the owner of the land must be agreeable to transferring ownership into collective ownership, and forgoing its rights to require a return of buildings and assets upon the expiry of a finite term as is typical of a BOT arrangement.

Attracting foreign investments

The developer may sell up to 40 percent of the housing-units of the condominium to foreigners. This is a noticeable (and welcome) change from the earlier draft of the law which, besides the 40 percent limit, proposes that only the units above the 6th floor are eligible to be sold to foreigners. Source of funds for purchases made by foreigners must come from abroad. It appears that foreign invested entities established within Myanmar may not be able to make purchases from earnings generated in Myanmar.

A legislative framework for title transfers

Transactions for the transfer of housing units with stamp duty properly paid on transaction documents have to be registered with the Registrar. The Registrar is obliged to maintain transfer records and upon registration of each transfer will issue housing registration certificates. Pursuant to such registration, the holder is recognized as the legal owner of the housing unit with rights to deal with the housing unit. Owners of housing-units may enter into transactions involving sales, exchanges, gifts, renunciations, leases, mortgages and bequests with Myanmar citizens, but may only engage in leases and mortgages with foreigners.

The law, while in some ways unclear and lacking in details, is clearly a positive development and will certainly have a significant impact on the investment landscape in Myanmar.