

KELVIN CHIA YANGON

LOCAL KNOW-HOW WITH INTERNATIONAL EXPERTISE

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Kelvin Chia Yangon Ltd. (KCY) has been in active operation in Myanmar since 1995, currently with offices in Yangon and Mandalay. KCY is the firm of choice for those seeking to navigate the fast-changing legal and regulatory landscape in Myanmar, where we have gained extensive experiences and expertise across all the fast-changing legal and regulatory landscape in Myanmar areas of commercial practice.

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AWAITED CONDOMINIUM RULES APPROVED

The Condominium Law (the “Law”), which was enacted in 2016, was hoped to boost the real estate industry and provide a modernized framework for both local and foreign investors. However, the Law could not be implemented because of the absence of implementing rules. The recently issued Condominium Rules (the “Rules”) under Notification No. 267/2017 of the Ministry of Construction now redresses this issue in part.

License and Permit for developing Condominiums

The Law had provided that a person desirous of operating a business of developing a condominium shall apply to the relevant management committee to obtain a business license for such purposes. The Rules clarify the procedural requirements for obtaining such a business license. A license application must be submitted to the relevant condominium management committee, which operates at both regional and state levels. An applicant can be an individual, an organization, a company, or a joint-venture. The license lasts 5 years, with fees yet to be specified.

Additionally, a condominium permit (the “Permit”) is required of developers for each condominium project. The Permit can be applied for concurrently with a License or after obtaining a License. The Permit ensures the project complies with the minimum standards and requirements.

Interestingly, the Rules contemplate that the units constructed may be used for purposes other than housing. In this regard, the Rules specifically provide that such other use should be disclosed in the application for the Permit, in particular, the type, area, floor plan, and total number of housing units to be used for commercial purposes shall be specified.

The Rules provide the formula for calculating the Share Value of Proportionate Ownership of each unit, which must be specified in a Permit application. While the License is not explicitly restricted to citizen investors or local companies, Permits expressly require a Myanmar Investment Commission (“MIC”) Permit or Endorsement where there is a foreign co-developer.

Converting the land for Condominium

According to the Rules, in order to be recognized as collectively owned land for a condominium project, the developer must register the intended land at the Condominium Registration Office under the Ministry of Construction. The land must be capable of transferrable ownership, at least 20,000 square feet and

suitable for a housing development under the Law. Previously developed projects that meet these specifications may also be converted into condominiums on application for a Permit. Different procedures are prescribed for circumstances where the land owner acts a developer jointly with a co-developer, and where the developer buys the land from the current owner for purposes of development. Sections 20 and 21 of the Rules contemplate that government owned land may be converted to collectively owned land for condominium projects, which may include land under long term lease from a government authority. The Rules have not clarified the procedure for land title transfer of government land into collectively owned land, which we envisage is not likely to entail the government relinquishing its land ownership rights or reversionary interests in land. Section 27 of the Rules provides that the duration of the land lease contract and the terms of land ownership or use permits of condominium land are to be the same as under prevailing land laws.

Sale and Ownership of Condominium Apartments

Previously there was no official framework for registering ownership of apartments in Myanmar. Now legal title to apartments in condominiums may be registered at the Condominium Registration Office. A registration certificate certifies legal ownership of the apartment, is transferable and is able to be used as security to secure a bank loan.

The seller is required to check with the Registrar prior to selling an apartment to a foreigner to ensure the sale is within the 40% foreign ownership limit set under the Law. Additionally, the developer is required to sell 75% of the apartments in a condominium project and only up to 25% of the apartments may be registered in the name of a single buyer. Whether foreigners are able to enjoy a proportionate share of the collectively owned land beneath a condominium is a question unanswered by the Rules, with foreign ownership of immovable property ordinarily restricted under prevailing laws.

Significantly, the developer may only conduct pre-sale of the housing units after receiving the Permit and upon completion of 30% of laying the foundation. In carrying out a pre-sale, the directives issued by the concerned department must be observed. Further, the developer is required to deposit all advance payments and instalments from presale to a specially designated bank account. The funds must not be used without first depositing into such bank account. Under Rule 15, the developer is obliged to open a separate bank account in Myanmar. In applying for the Permit, the bank statement evidencing that an amount equivalent to 20 percent of the total cost of development (or an amount set by the relevant Management Committee for large scale condominium projects) has deposited into such bank account, must be presented. The funds from the aforesaid bank account shall be withdrawn only for the purpose of development, and shall not be used for any other purposes.

NEW MINIMUM WAGE PROPOSED

The National Committee for Minimum Wage (the “Committee”) kicked-off 2018 by announcing under Notification 1/2018 their proposed revision to the minimum wage. On the doorstep of finalization, the new minimum wage will apply nationwide.

The newly proposed minimum wage is set at 4,800 kyats per 8-hour working day or 600 kyats per hour. The current minimum wage, set by the previous regime in August 2015, is 3,600 kyats per working day or 450 kyats per hour, making the revised rate effectively a 33.3% increase.

The hourly minimum wage will also apply to part-time workers. Probationary and trainee employees are entitled to a 75% and 50% portion of the minimum wage, respectively. Workers earning wages above the revised minimum will be entitled to retain their higher rate once the new minimum is in effect. Small enterprises and family businesses with fewer than 10 employees will be exempted, which is down from 15 employees under the current exemption.

The Notification provides that Management Committees of Special Economic Zones will be able to propose to the Committee their desired minimum wage according to the type of investment. The National Committee will ultimately prescribe different minimum wages in SEZs upon consideration of the proposals.

Now in a period of public consultation, the Committee will allow up to 60 days for further discussion and amendments.

EDUCATION REFORM BILL

On 5 January 2018, the Department of Basic Education of the Ministry of Education published the Draft Basic Education Law (the “Bill”), which will replace the 1973 Basic Education Law and aims to reform the system of basic education countrywide. The Bill lays out new principles for basic education, including providing equal opportunities for students of all backgrounds, promoting literature, culture and traditions of all ethnicities, and decentralizing the education system.

Notably, the Bill aligns basic education with the international K-12 education model, up from the 10-grade basic education system currently in place. According to section 7 of the Bill, the reform to K-12 would include all types of school in Myanmar including private schools, monastic schools, and special education programs schools.

The Bill is currently published for public consultation, and it is anticipated that it will be enacted shortly after discussion in the Hluttaw.



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