



<< Left
Nwe Oo
Attorney-at-Law
nweoo@tilleke.com

<< Right
Dino Santaniello
Consultant
dino.s@tilleke.com

Myanmar's Condominium Law of 2016: A Foundation for Foreign Investment

In 2011, when Myanmar embarked on a series of political and economic reforms, there was a surge in demand for real estate. Demand quickly outpaced supply, resulting in an undersupply of quality office space and housing. By 2014, rental prices in Yangon's prime areas had climbed to as high as USD 100 per square meter, rivaling those found in lower Manhattan and over three times those in prime areas of Bangkok. More recently, the combined effects of oversupply and Myanmar's undeveloped real estate laws have led to a softening of the real estate market, causing rental prices in many high-end developments to fall.

Recognizing the need to encourage real estate investment and to support the development of a more robust legal structure focused on the industry, on January 22, 2016, the government passed the Condominium Law. In this article, we provide an overview of the law and highlight areas which may need further refinement.

Overview

The Condominium Law, for the first time, allows foreign nationals to legally purchase condominiums in Myanmar. Total foreign ownership in any one project, however, is limited to 40 percent of the total project space. The Condominium Law stipulates the criteria necessary for a project to qualify as a condominium suitable for foreign ownership. To qualify under the law, a building must meet the following main requirements:

- ▶ The licensed developer must construct the building on a "collectively owned" land parcel. This is land owned by persons who have obtained an apartment ownership registration certificate. The land must be registered through local authorities as collectively owned land, even if the developers are the actual owners of the land.
- ▶ Before the project is developed, the developer must obtain the approval of the Ministry of Construction to qualify the building as a condominium. After construction is completed and the building is inspected, a "residence permit" must be obtained.
- ▶ The condominium must be constructed on a land mass of at least 0.5 acres or 20,000 feet.

These steps apply to projects that were not in place or under construction at the time the law was enacted. For projects that were commenced or that existed before the law was enacted, a Special Purpose Committee has the authority to review and approve projects as condominiums, provided they meet these main requirements. To date, the process and timelines that the Special Purpose Committee uses to evaluate preexisting projects have not been clearly outlined.

For the first time, the Condominium Law also provides a legal framework allowing the financing of condominiums. Prior to the Condominium Law, buyers of condominiums paid almost exclusively in cash, as financing options were

largely unavailable. There is no limitation on financing for foreign buyers, who may seek financing from abroad. However, foreign investors must purchase a condominium through a transfer of funds from abroad, as there is no current allowance for in-country payment.

Challenges

The Condominium Law aims to establish a framework that promotes and facilitates foreign investment in Myanmar's real estate market. Although this is an important step, there is still some way to go, as the law lacks clarity in certain key areas.

It is uncertain whether existing or developing projects can qualify as condominiums under the Condominium Law. For example, there is significant uncertainty over whether Build-Operate-Transfer (BOT) projects, existing or currently under development in Myanmar, will qualify as condominiums under the law.

Many BOT projects are developed on land granted for use by the Myanmar government. The Condominium Law states that the land must be registered as collectively owned for the benefit of the owners, and cannot be the property of a department, organization, or person. The difficulty here is that many buildings that owners want qualified as condominiums are currently being built under BOT projects on land which is owned by Myanmar government entities.

There has been significant public debate over whether an exception should be granted to allow these projects to qualify as condominiums under the law. No such exception has been provided to date, although government officials have tried to assuage investor fears by saying that the ministries that own the land on which these projects are built would have the authority to give permission to register those lands as required by the law. This may provide a practical solution, but it does not directly address this issue.

Another issue that the Condominium Law does not address is whether there are any limitations on commercial use by foreign owners of units registered under the law, whether by the owner or lessee. Potential investors should consult the relevant authorities before committing to long-term investment in a commercial enterprise that involves the Condominium Law.

In addition, while there are general provisions stating that there is a process through which a project can qualify as a condominium with the approval of a Management or Special Committee, the law is silent on what the process entails, leaving the details for development by the committees. Until this process is clarified, investors should take a cautious approach. This is particularly important as it relates to possible investment in developing or existing projects reviewed by the Special Purpose Committee.

Other concerns include the fate of projects which have halted or have been suspended because of discovered zoning infringements. Zoning infringements were overlooked for many years, but under the new democratically elected government, Myanmar's zoning laws have been more heavily enforced. As a result, some high-profile projects have been suspended. While this is expected to benefit the industry in the long term, in the interim, potential investors should conduct thorough due diligence on a project, the developer, and the chain of land titles and registrations.

Outlook

The passage of the new Condominium Law represents another important effort to encourage foreign investment and economic development in Myanmar. While it is uncertain whether some preexisting projects can qualify for condominium classification and whether certain commercial ventures will be permitted, the Condominium Law nonetheless opens an additional market for foreign investment in Myanmar. 🏡