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主 論 文 の 要 旨

論文題目

Contractual Transfer of Property Interests in
Myanmar
(ミャンマーにおける不動産譲渡契約)

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論 文 内 容 の 要 旨

This dissertation examines the transaction of real property conveyancing in Myanmar. Because the people in Myanmar mostly convey the real property with informal sale contracts even though the relevant laws provide to register the contract document as an obligatory matter. As a result, high volume of property conveyancing disputes is increasing that triggered common risks to the buyer. Major disputes are as of the people who create 1) double contracts in order to sell one property to two buyers and 3) fraudulent contracts to sell the property, which the seller has no property at all, to the buyer. The research analyses the following hypothesis:

- 1) Why do people stay away from the registration process?
- 2) Is there any other secure way not to make registration for the real property transfer?
- 3) What is the effect of the courts' decision for the registered document?
- 4) Do statutory languages under the relevant laws require revisiting?
- 5) What is the position of deed recording system at the office of the registration of deeds?

And

6) What is the role if informal sale contracts in conveyancing practice?

To this regard, the research analyses to find out the possible solutions and justifications to facilitate the above issues and to encourage the people for taking advantage registration process in order to reduce the risk of real property conveyancing in Myanmar by recommending for the system concerning registrations to be made at the office of the registration of deeds thereby contributing to the safe and smooth conduct of transactions on the real property.

In doing the research, real property conveyancing in England and Japan will be studied with the objective of exploring possible solutions to the real property conveyancing problems currently faced in Myanmar. The research paper is composed of three chapters plus the introduction and the conclusion parts. In Chapter 1, the study of conveyancing scheme for real property in Myanmar will be studied. This will encompass the transaction in theory and actual conveyancing practices. Relevant problems and cases will be presented to illustrate the issues currently faced in Myanmar. Chapter 2 will examine the legal process and legal practice of Myanmar courts with respect to the application of existing laws. The most critical provisions related to the problem will be identified in this chapter. Chapter 3 concerns comparison with real property conveyancing in England and Japan. Comparison will reveal factors that lead to a risky environment for real property transactions in Myanmar. Potential implications and simplifications to lay the foundation for a more secure conveyancing process for immovable property will be identified in this chapter. Following the Chapter 3, the conclusion part will offer suggestions, implications and recommendations to encourage people to take advantage registration process for

their transfer of real property by removing and reducing the obstacles in conveyancing processes for obtaining the secure transaction of real property in Myanmar.

As the recommendations of the research after the study, it can be noted that since Myanmar courts themselves have to abide the laws, have to give court's decision within the framework of the laws and therefore, the laws are crucial to be in line with the current circumstances since some 19th century laws and rules under them become anachronism. As the laws tended to become static, it is particularly required to revisit the current Registration Act of 1909 in the following parts not to wither but to keep pace with the progressive ideas of an advancing community.

- 1) Raising the threshold value to 100,000 kyats under section 17 of the Registration Act 1909 to be consistent with the sections 54 and 59 of the Law Amending the Transfer of Property Act 2013
- 2) Shortening the time for registration from 4 months to 60 days under sections 23, 24, 25 and 26 of the Registration Act 1909
- 3) Adding explicit language to section 47 of the Registration Act 1909, by including "Though effective date of registration will be the execution date of the sale contract, first registration contract will have priority if it is compared with other registered sale contracts by following the chronological order of registration."
- 4) Enacting the Condominium Law in the very near future for the conveyancing of flats

Besides, other areas in making the registration process can also be considered as in the

followings for possible reform to persuade the people for taking registration for transfer of real property.

- 1) Reducing the 30% income tax on purchase price
- 2) Recreating the income tax system, not only to reduce the 30% income tax but also to entirely reform the current system of tax recovery based on “white money” and “black money”
- 3) Raising the amount of annual property tax
- 4) Transferring records relating to registered transactions to a single local office, thus reducing complexity and risk, and saving unnecessary work
- 5) Creating a more effective deeds recording system at the office of the registration of deeds to avoid overlapping registration documents on same property, through a title owner name index system keyed to land maps and registered deeds, or (more ambitiously) migrating to title registration based on land parcels
- 6) Establishing more secure title possession documents to forestall problems of forgery
- 7) Expediting procedures for title search
- 8) Offering training to the public concerning the risks of informal property transfers and the mechanisms for registration

Eventually, the risk of real property conveyancing may be reduced if Myanmar considers the recommendations above. The task will take time, however. Myanmar is fortunate to have comprehensive, well thought-out well-tried schemes in the Japanese and English real property

registration systems, for a more certain path to long-overdue reforms of the conveyancing system.

These resources are invaluable to prospective reform of the Myanmar registration system.



