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THE PROPOSED DIVIDED CO-OWNERSHIP REGULATION

EGYPT FINANCIAL SERVICES PROJECT
TECHNICAL REPORT #47

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ACRONYMS

BOD	Board of Directors
CBE	Central Bank of Egypt
CIDA	Canadian International Development Agency
CAPMAS	Central Agency for Public Mobilization and Statistics
CASE	Cairo and Alexandria Stock Exchanges
CBE	Central Bank of Egypt
CMA	Capital Market Authority
CRA	Commercial Registry Authority
ECIM	Egyptian Cadastral Information Management (Finnish-funded project)
ECMA	Egyptian Capital Market Association
EDO	Egyptian Survey Authority District Office
EFS	Egypt Financial Services
EHFC	Egyptian Housing Finance Company
EIMA	Egyptian Investment Management Association
EISA	Egyptian Insurance Supervisory Authority
EJA	Egyptian Judges Association
FTC	Federal Trade Commission
GAFI	General Authority for Free Zones and Investment
GIS	Geographic Information System
GOE	Government of Egypt
GSF	Guarantee and Subsidy for Real Estate Activities Fund
MSAD	Ministry of State for Administrative Development
MOF	Ministry of Finance
MOH	Ministry of Housing
MOJ	Ministry of Justice
MOI	Ministry of Investment
MOU	Memorandum of Understanding
NUCA	New Urban Community Authority for Sixth of October
UCD	Universal Cadastral Database
UNCITRAL	United Nations Commission on International Trade Law
USAID	United States Agency for International Development
WB	World Bank

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Current Law

The concepts of ownership of multistory buildings, apartments, and joint ownership of common areas are well-established in Egyptian law.¹ Owners of apartments are deemed to be “partners in ownership” of the land and the other parts of the building provided for common use, such as the foundation, exterior walls, entryways, yards, roofs, elevators, basements and utility pipes.² The common areas are indivisible and may not be separated from ownership of the apartment.³ Each owner’s share of the common property is based on the value of his or her apartment in relation to the other owners.⁴ Apartment owners may form “owners’ unions” to provide for the joint management and maintenance of the building.⁵

It is our opinion that the legal framework in Egypt will allow the registration of apartments without amending the present legal framework.

Although not a priority for the registration component of this project, it is recommended that the GOE consider adopting a regulation or law in the long-term.

Proposal

Although the legal framework in Egypt is adequate for the registration of apartments and other units in buildings, the framework can be improved to better define the relationships among owners and more clearly delineate the rights and obligations of owners and developers of apartments and apartment projects, and provide options for more flexible administration of divided co-ownership. The regulation that is proposed⁶ here, regularizes how land and the building units in buildings situated on the land can be treated to refine conveyancing of common areas⁷. It simplifies the legal description for building units, which as pointed out in the McFadzean report, are lengthy and tedious⁸. It allows the land surrounding the building to be easily conveyed by making it common property appurtenant to the building units, and the fractional shares are conveyed along with conveyances of the building units. It provides for a plan that is prepared under guidelines of the ESA and requires that it be registered as part of a declaration of divided co-ownership so as to give public notice of dimensions of the building units and the common property as shown on the plan, and it clarifies ownership issues related to the common property. Finally, the proposed regulation contains provisions for staged development of apartment unit projects, and provides certain protections for unit owners that are not a part of the current legal framework.

The proposed regulation is essentially based upon the draft regulation⁹ prepared by Stephen B. Butler, Legal Specialist for the World Bank, dated August 5, 2005, which itself “is based

¹ See Civil Code Articles 856 through 869. For much more detail on the issues of individual apartment and condominium-type ownership the reader is referred to “Initial Report of the Legal Framework for Registering Apartment Transactions in Egypt” by Steve McFadzean, Strata Title Advisor, 24 April 2005.

² Civil Code, Article 856, paragraph 1.

³ Civil Code, Article 856, paragraph 2.

⁴ *Ibid.* This provision of the Civil Code might cause some difficulties as it does not specify when the value is to be determined.

⁵ Civil Code, Article 862 et seq.

⁶ Hereinafter “proposed regulation”.

⁷ We recognize that buildings in Egypt can be conveyed and owned separately from the land, but in such situations the land would not be part of the common area of divided co-ownership. Therefore, the proposed regulation deals only with situations where the land as well as the buildings and apartment units are part of a divided ownership regime.

⁸ *Id.* at p. 5 and Appendix 3.

⁹ Hereinafter “draft regulation”.

on the Quebec Civil Code¹⁰. Additionally, we have referred to the comments in the McFadzean Report, the Uniform Condominium Act that has been widely adopted in the United States, and the Strata Titles Manual for Western Australia (2001).

The McFadzean report observes that:

The streetscape in Cairo demonstrates that apartment-type dwellings are a predominant form of housing. It is therefore important that an effective legal basis for creating title to separate apartments and for buying, selling, mortgaging and leasing such apartments should be available.

The draft regulation is an appropriate document to use as the foundation for establishing the legal framework for registering apartments. The following features are its strengths:

- Divided co-ownership occurs when certain portions of an immovable are owned by specific owners for their use alone and certain portions are held in co-ownership¹¹;
- The system for a particular immovable is established when a declaration of co-ownership is registered with the Real Estate Publicity Department (REPD)¹²;
- Common portions are defined with specificity¹³;
- Each unit is assigned an undivided right of ownership in the common portions¹⁴;
- Each unit constitutes a distinct object of real property and a conveyance of a unit includes transfer of the fractional share appurtenant to the unit¹⁵;
- There is provision for divided co-ownership where the immovable is built on land that is leased¹⁶;
- The units and common areas are located and legally described with reference to a “cadastre plan” approved by the Egyptian Survey Authority (ESA), registered as part of the declaration¹⁷;
- Divided co-ownership can be established for existing buildings and new developments¹⁸;
- A legal entity, called a syndicate, is provided for to maintain and manage the common portions and appurtenances¹⁹;

¹⁰ Email correspondence from Steve Butler to Dougal Menelaws, EFS Task 2 Team Leader, dated October 10, 2005.

¹¹ Draft Article 1 (1). Although the draft regulation does not ascribe names its divisions, this report will follow the practice in Egyptian laws and regulations and refer to the major divisions as “Articles”, and numbered and lettered subdivisions in sequential parentheses. The term “paragraph” is used for unnumbered or lettered divisions of the Article and other subdivisions.

¹² Draft Article 3 (1).

¹³ Draft Article 2 (4).

¹⁴ Draft Article 2 (2)

¹⁵ Draft Article 2 (5).

¹⁶ Draft Article 2 (8).

¹⁷ Draft Article 4 and Draft Article 5.

¹⁸ Draft Article 1 (2).

- Mandatory disclosure provisions protect subsequent purchasers; and
- Certain protections to mortgage creditors are included²⁰.

In addition, the draft regulation together with the registration law and regulations, provides the legal framework for protecting the rights of unit owners by insuring that persons engaged in transactions regarding a unit after the registration of the declaration acquire their rights subject to the covenants, conditions and restrictions established for the divided co-ownership regime. The proposed regulation builds upon this draft, takes into account the current law in Egypt, and incorporates provisions that correspond to international best practices.

Terminology

It must be understood at the outset that internationally the terminology for what is called here “divided co-ownership” varies widely from jurisdiction to jurisdiction and covers rights and obligations that also vary, often significantly²¹. It is important, then, before taking up a discussion of the various provisions of the draft regulation to come to some sort of agreement on the terminology to be employed. The goal is to take the essential terms of art and use an English variant consistent with existing translations of Egyptian law where possible. Since the starting point for the proposed regulation is the World Bank draft regulation, terms that need appropriate definition are listed together with a discussion and a reasoned suggestion for the term to be used to cover the concept. The terms are taken more or less in the order that they appear in the draft regulation, which is in no way a reflection on the importance of the term or the legal concept that it conveys. One finds that in most cases one term is substituted for another, where appropriate, and for the given reason, without the need to change in any significant manner the substantive legal concept developed in the draft regulation.

Private portion

This term is used in the draft regulation to represent “those portions of the immovable that are the property of a specific co-owner and that are for his use alone”²². The term unit is perhaps a more customary term for a private apartment and this is apparent in the translations from the Arabic to English in the versions of the laws under consideration by the project. The McFadzean Report points out that:

¹⁹ Draft Article 2 (12).

²⁰ Draft Article 15.

²¹ For a general discussion of terminology, see <http://www.answers.com/topic/condominium>. See also McFadzean Report p. 11 where the author observes that:

It is apparent that many different terms are used concerning the development of apartments, and that potential for misunderstanding exists. For example, the adviser’s scope of activity uses the terminology of strata titles. That concept is used extensively in Australia, Canada and some other jurisdictions to describe the process of dividing blocks of apartments into separate parts of buildings for separate ownership by means of a ‘strata plan’. Thus a ‘strata corporation’ or strata body corporate, being a juridical person formed automatically upon the registration of the plan and consisting of all owners of the apartments in the building, is created under the law. Common property is vested in the juridical person. Generally, strata title occurs in the context of Title Registration, with a form of certificate of title issuing for each apartment. Other jurisdictions use condominium titles based on condominium plans, resulting in the creation of a corporate body of apartment owners known as a condominium association.

²² Draft Article 2 (1).

The term Building Unit was chosen because it is prominent in the English translation of the Executive Regulation under Sigueal El-ainee for the law 142 of 1964²³.

Therefore, to maintain consistency with existing English translations of the various laws and regulations the proposed regulation uses the term “building unit²⁴” to cover the same concept as the term “private portion” in the draft regulation.

Common Portion and Restricted Common Portion

Here again, the McFadzean report sheds light on the terminology to be used, stating:

The term “common property” in relation to a building of separately-owned apartments is used interchangeably with joint property in the common areas of the building. Both refer to the property owned in common with all owners of the apartment by virtue of Article 856 of the Civil Code/1948²⁵.

The proposed regulation, therefore, uses the term “common property” to refer to the property owned in common with all owners of the building units.

Cadastre Plan

The entire complex of a divided co-ownership regime consists of the immovable, building(s) and apartments within building, so there should be a plan for the immovable, the building, and a schematic plan identifying the relative location of individual units within a building, assigning a number to each unit in the building²⁶. The set of plans will continue to be called the cadastre plans and will consist of a location plan and building plan.

The term building unit plan has been employed to maintain consistency with the terms in the English translation of the regulations and Law 142:1964 (Sigueal El-Ainee). The McFadzean Report establishes that:

In an attempt to reduce confusion, the adviser opted to use the concept of a ‘Building Unit Plan’ [instead of condominium plan] to divide blocks of apartments into ‘Building Units’, illustrated in the plan, so that, should the Title Registry be introduced in urban areas, a separate page of the Title Register can be created for each separate apartment (to record the current ownership and encumbrance details). When reference is made to a block of apartments, it means a single medium or high-rise building containing separate apartments²⁷. (McFadzean Report footnote removed).

²³ McFadzean Report p. 11.

²⁴ See Article 4 (1) of Law 142:1964 (Sigueal El-Ainee).

²⁵ Ibidem.

²⁶ Law 142: 1964 (Sigueal El-Ainee) uses “real estate unit” (Article 15 *et seq.*, for example) sometimes and “cadastral unit” Article 11 at other times.

²⁷ McFadzean Report p. 11.

Syndicate

The term “syndicate” is used in the draft regulation to refer to the legal entity formed when the declaration is filed, constituting an association of the owners of the building units. The purpose of the syndicate is to provide a governing mechanism to maintain and manage the common property. An association consisting of all the divided co-owners manages the common property through a board of directors elected by the members. The same concept is also used in other countries with different names. The organization is set up as a not-for-profit legal entity to govern the joint rights and obligations of the owners of the individual units. Such an organization may or may not own all or part of the common property, but an often followed scheme is that the common property is owned by the unit owners in undivided fractional shares. A more complete discussion can be found in the commentary below in the discussion regarding proposed draft Article 2. Although syndicate²⁸ could have been used, it is felt that a more appropriate is association²⁹. For the purpose of the proposed regulation, the term “owners’ association” has been substituted for syndicate.

Substantive Provisions of the Draft Regulation

As stated earlier in this report the draft regulation is an appropriate model to lay the foundation for establishing divided co-ownership organization in Egypt. However, as with the terminology, some of the provisions that are set out in the draft regulation need a closer analysis to determine whether they are suitable for a framework in Egypt. Some of the provisions are inconsistent with current law and practice, and in those cases where the current law and practice follows appropriate principles the proposed draft follows those principles. Where applicable, comments and recommendations in the McFadzean report will be brought to bear on the issue. This report will recite the “Draft Article” from the draft regulation, set it out as drafted, and then provide analysis, comment and propose modifications where it is deemed appropriate or necessary. Many of the changes made to the draft regulation are cosmetic. This applies primarily to terminology used. Many of the provisions of the proposed draft make substantive additions or changes to the provisions set out in the draft regulations.

Definition of Building Unit

The present law in Egypt does not adequately provide for the description of immovables and the separate private building units, common property, restricted common property and the like. For example, Article 8 (1) of the law No. 142:1964 (Sigueal El-Ainee) states:

For the purposes of this law, a real estate unit is deemed to be as follows:

First- any plot of land within a single cadastral zone, owned by one person or jointly by several persons without being divided by public or private domain, or none of its parts shall have or due any rights that are not established for other parts thereof.

Second- mines and quarries

Third- public utilities

²⁸ The term “syndicate” is not found in any of the translations of the registry laws or regulations.

²⁹ As the McFadzean Report points out on p. 10 the term for this type of legal entity varies widely from jurisdiction.

This definition of the “real estate unit” does not describe buildings or parts of buildings. The regulations, however, clearly imply that buildings and subdivisions of buildings can be real estate units³⁰.

Furthermore, the McFadzean report points out that:

The walls between apartments [but not the floors] are considered common property of the adjoining owners. It is not clear if this means that ownership of the entire wall is joint and indivisible or whether each owns to the middle of the wall³¹.

It is proposed that draft regulation Article 2 (1) be revised to make separate paragraphs describing building units, common property and restricted common property:

Proposed Article 2 (1)

Those portions of the immovable that are the property of a specific co-owner bounded by the finished surface of the walls, floors and ceilings and are for his use alone are called the building units.

Those portions of the immovable that are not building units are common property.

Some of the common property may serve the use of only one or more but fewer than all of the building units, and are called common property for restricted use. The rules regarding the common property also apply to common property for restricted use, except as restricted in the declaration of co-ownership.

The Uniform Condominium Act in force in most of the United States, in defining building units states that:

If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common property³².

In drafting the proposed regulation it is felt that this type of detail would not be appropriate for the regulation, and it is assumed that the concept has been captured by referring to the “finished surface” of the walls, floors, and ceilings.

The third paragraph of proposed Article 2 (1) includes a provision for restricted common property, which are common property reserved for the use of one or several, but not all building unit owners. These are called “common property for restricted use”. This is a useful concept for dealing with balconies, storage spaces, parking spaces and the like.

³⁰ See for example Article 66, 68 and 78 of Executive Regulations on Sigeal El-Ainee No. 189:1975.

³¹ McFadzean Report p. 15.

³² Uniform Condominium Act § 2-102 (1).

Draft Article 2: Fractional Shares

Ownership of Common Property

Draft Article 2 (2) states:

Ownership of the common portions of the immovable is divided into fractions (the “fractional shares”) belonging to one or several co-owners. Each co-owner has an undivided right of ownership in the common portions equal to the relative size of his fractional share.

The McFadzean report points out that:

Management of common property - the current law already provides for the joint ownership of common parts of the building. This is set out in the Civil Code, which deems the land allocated as common property to be owned in common by apartment owners...The management provisions in the Civil Code are not detailed and have some weaknesses including (i) the size of the share of jointly-owned common areas is not clearly established, which can cause conflict over the size of contributions to repairs...

Furthermore:

The term “common property” in relation to a building of separately-owned apartments is used interchangeably with joint property in the common areas of the building. Both refer to the property owned in common with all owners of the apartment by virtue of Article 856 of the Civil Code/1948³³.

The McFadzean report summarizes and comments on Article 856 of the Civil Code and raises issues that ought to be of concern when establishing an undivided co-ownership framework. Specifically, there is concern that the ownership vesting provision in the Civil Code is not strong enough and leaves open the question whether or not the ownership to the common areas is actually vested in the owners of the building units, but the comment concludes that:

The intention seems ...to deem the owners to be partners in ownership of the land specified for common use. This may be broad enough to cover successors in title³⁴.

The draft regulation clears up the ambiguity pointed out in the McFadzean Report by clearly vesting the common areas in the unit owners in Article 2 (2). Furthermore the draft regulation provides that:

³³ Id. at p. 11.

³⁴ Id. Appendix 1 “Table of relevant laws reviewed by advisor”.

Draft Article 2 (5) and (6)

5. Each private portion of the immovable constitutes a distinct object of real property and may be alienated in whole or in part. Alienation includes, in each case, the fractional share appurtenant to the private portion, as well as the right to use the restricted common portions, where applicable.

6. The fractional share appurtenant to a private portion may not be alienated separately from the private portion or be the object of an action in partition. Fractional shares are not distinct objects of real property for the purposes of real property assessment and taxation.

Draft Article 2 (2) gives an undivided right of ownership in the fractional share of the common area and in that respect resolves how the owners hold the title to the common area. Note that the cited Civil Code provisions leave open the question whether a partnership of which the unit owners are the partners, is vested with title to the common areas. Adoption of a provision in a regulation similar to that in the draft regulation leaves no question as to how the ownership of the common area is held.

The vesting of title in fractional shares directly in the unit owners is different than is anticipated in many places in the McFadzean report, which describes a system where the association of unit owners, as a legal entity, is vested with title to the common areas³⁵. Both the system set out in the draft regulation and the scheme set out in the McFadzean report are commonly used internationally³⁶. In theory, either method for dealing with ownership of the common property is appropriate. However, as the McFadzean report points out, the Civil Code has provisions that cover this issue. It is worth setting out Civil Code Article 856 in full. It states³⁷:

1. If several owners possess the house stories or its different apartments, they shall be considered partners in ownership of the land of parts of the building which are provided for common use by all, and in particular the foundations, the main walls, the entrances, yards, roofs, elevators, passages, corridors, floor bases and all kinds of pipes and tubes except those inside the stories or apartments, unless otherwise prescribed in the ownership documents.

2. These common parts of the house shall be indivisible, and the portion of each owner in them shall be in proportion of the value of the part he/she possesses in the house. No owner shall dispose of his/her portion therein independently from the part he/she possesses.

³⁵ Id. at pp. 4, 8, 15, and 26.

³⁶ See, for example, The Uniform Condominium Act §§ 1-103 (7), adopted in most States in the United States, which states that:

Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

³⁷ Were it not for Civil Code Article 856 (1) the default situation would obtain as is set out in Civil Code Article 825:

If two or more persons possess an object with which the share of each one of them is not sorted out, they shall be common partners, and the shares shall be computed equally among them if no evidence provides otherwise.

3. Partitions between apartments shall be owned jointly between the owners of these two apartments.

Thus, the proposed regulation follows this method for vesting ownership of the common property.

Proposed Article 2 (5) and (6)

5. Each building unit constitutes a distinct object of real property and may be alienated in whole or in part. Alienation includes, in each case, the fractional share appurtenant to the building unit, whether described in the document of alienation or not, as well as the right to use the restricted common property, where applicable.

6. The fractional share appurtenant to a building unit may not be alienated separately from the building unit or be the object of an action in partition. Fractional shares are not distinct objects of real property for the purposes of real property assessment and taxation.

One additional issue must be addressed. The Executive Regulation on Sigeual El-Ainee No. 189 of 1975 provides in Article 75 that:

A wall that exists between two adjacent real estate units is considered a common property in the following cases:

The ownership legal documents prove that to be true.

If the neighbors agreed upon that.

If the apparent status (physically) is so clear that we can decided that.

The draft regulation Article 2 (4) states in the last paragraph that:

Partitions or walls that are not part of the foundations and main walls of a building but which separate a private portion from a common portion or from another private portion are presumed common.

In light of Article 75 of the Executive Regulation this should be modified slightly to read:

Proposed Article 2 (4) last sentence

Partitions, walls, floors and roofs that are not part of a building unit, the foundations or main walls of a building, but which separate a building unit from another building unit or the common property are presumed to be common property, unless there are legal documents to the contrary.

Allocation of Fractional Shares

Allocation of the “fractional share” of each owner in the common elements needs some consideration. There are generally three methods for handling the allocation of the fractional

share of the common property allocated to the units; equally, by size, or by value³⁸. The draft regulation determines the fractional share base upon area³⁹. This is inconsistent with the Civil Code that allocates the share based upon value⁴⁰.

The McFadzean report, of course, recognizes that Civil Code Article 856 (2) allocates the share of each building unit owner by value and the report further comments that allocation by value is common in other jurisdictions⁴¹. Mr. McFadzean points out that the problem with determining fractional share by value is that there may not be sufficient persons with the training to determine value at the time of establishment of the particular undivided co-ownership project, it may be time consuming to make appropriate value assessments, and the values of the units are continually changing⁴². This makes the allocation by value perhaps too complicated to allow expeditious establishment of a divided co-ownership regime for a particular building or set of buildings. This suggests that size⁴³ is a more appropriate method for Egypt. The McFadzean Report, furthermore, states that:

The size of the share and thus the percentage contribution to apartment owners is not always clear. It would be improved by requiring a schedule of shares to be attached to a plan defining the apartments and common property. The shares can be assigned by the developer according to the estimated value of the shares⁴⁴. (footnote omitted)

.Article 2 (3) of the draft regulation in fact requires that the common portions be allocated by area by stating:

Draft Article 2

³⁸ Other methods may be found depending upon the specific facts in organizing the condominium, but these are the three main methods and this report will limit the discussion to these.

³⁹ Draft Regulation Article 2 (3).

⁴⁰ Civil Code Article 856 (2).

⁴¹ See, for example, Comments to the Uniform Condominium Act (1980), <http://www.law.upenn.edu/bl/ulc/fnact99/1980s/uca80.htm>, commenting on § 2-107 stating that:

Most existing condominium statutes require a single common basis, usually related to the "value" of the units, to be used in the allocation of common element interests, votes in the association, and common expense liabilities. This Act departs radically from such requirements by permitting each of these allocations to be made on different bases, and by permitting allocations which are unrelated to value.

Thus, all three allocations might be made equally among all units, or in proportion to the relative size of each unit, or on the basis of any other formula the declarant may select, regardless of the values of those units. Moreover, "size" might be used, for example, in allocating common expenses and common element interests, while equality is used in allocating votes in the association. This section does not require that the formulas used by the declarant be justified, but it does require that the formulas be explained. The sole restriction on the formulas to be used in these allocations is that they not discriminate in favor of the units owned by the declarant. Otherwise, each of the separate allocations may be made on any basis which the declarant chooses, and none of the allocations need be tied to any other allocation.

⁴² McFadzean Report, Appendix 1 stating:

One problem is that the value of lots may vary over time. At the time of purchase the buyer may not be capable of calculating the value of every apartment without access and without valuation skills. It may be better to more clearly and publicly specify the shares and to disclose this in the apartment plan

⁴³ Size might be by area, or conceivably by volume of each building unit.

⁴⁴ McFadzean Report p. 16. See also p. 15

The relative size of each of the fractional shares with reference to the aggregate of all the fractional shares is determined as the quotient of the physical area of the co-owner's private portion divided by the aggregate physical area of all private portions of the immovable. The sum of all fractional shares shall equal one (1) after rounding for minor discrepancies.

Although allocation of the fractional shares determined by area is perhaps a simpler determination than allocation by value, it is recommended that the proposed regulation leave flexibility and allow any reasonable method that can be conveniently calculated. Therefore, the proposed regulation recommends the following language;

Proposed Article 2 (2)

Ownership of the common property of the immovable is divided into fractions (the "fractional shares") belonging to one or several co-owners. The fractional shares can be equal, based upon the area, or value or any other method that can be reasonably calculated, as set out in the declaration of divided co-ownership. Each co-owner has an undivided right of ownership in the common property equal to the fractional share or shares of the buildings units owned.

This allows for the method (value) as set out in the Civil Code of Egypt, but also allows for other methods that might be more appropriate for the divided co-ownership organization. To implement this Article of the proposed regulation, however, the Civil Code 856 (2) would have to be amended.

The draft regulation requires in Article 4 (2) (e) that a chart⁴⁵ or charts showing the fractional share attached to each building unit be part of the declaration of co-ownership registered with the Real Estate Publicity Department. This allows for an unambiguous allocation of the common area attached to each building unit and this is readily ascertainable, because the declaration of co-ownership containing the chart(s) of the fractional shares is registered. This provision has been carried over into the proposed draft.

Finally, the proposed regulation recommends the deletion of draft Article 2 (3), since it is required in the proposed regulation that the method for allocating common property be set out in the declaration, and the method for determining the allocation of voting rights and common expenses must be set out in the by-laws.

Conveyance of the Fractional Share

The draft regulation has the following provision regarding the conveyance of a building unit and the fractional share:

Draft Article 2 (5)

Each private portion of the immovable constitutes a distinct object of real property and may be alienated in whole or in part. Alienation includes, in each case, the fractional share appurtenant to the private portion, as well as the right to use the restricted common portions, where applicable.

⁴⁵ The proposed regulations will use the word "table" instead of "chart".

To resolve any questions about the transfer of fractional shares in the common portions it is suggested that the proposed regulation modify this article slightly to read;

Proposed Article 2 (4) and 2 (5)

Each building unit constitutes a distinct object of real property and may be alienated in whole or in part. Alienation includes, in each case, the fractional share appurtenant to the building unit, whether described in the document of alienation or not, as well as the right to use the restricted common property, where applicable.

The fractional share of the common property appurtenant to a building unit may not be alienated separately from the building unit or be the object of an action in partition. Fractional shares are not distinct objects of real property for the purposes of real property assessment and taxation.

This proposal is then consistent with the assessment of the laws as described in the McFadzean report:

The share of common property cannot be transferred independently of the apartment, so the responsibility of contributing to the maintenance of the common property cannot be assigned⁴⁶.

This is found in Egyptian Civil Code Article 856 (2).

Definition of Common Portions

The draft regulation further explicitly defines the common portions.

Draft Article 2 (4)

The following are presumed to be common property of the immovable: the land, yards, verandas or balconies, parks and gardens, access, ways, stairways and elevators, passageways and halls, common service areas, parking and storage areas, basements, foundations and main walls of immovables, and common equipment and apparatus, such as central heating and air-conditioning systems and the piping and wiring, including such of the foregoing that is found in building units. Partitions or walls that are not part of the foundations and main walls of a building but which separate a private portion from a common property or from another building units are presumed common.

Proposed Article 2 (3⁴⁷)

⁴⁶ McFadzean report p. 15.

⁴⁷ There has been a renumbering due to the omission in the proposed draft of draft Article 2(3).

The following is presumed to be common property of the immovable: the land, yards, verandas or balconies, parks and gardens, access ways, stairways and elevators, passageways and halls, common service areas, parking and storage areas, basements, foundations and main walls of immovables, and common equipment and apparatus, such as the central heating and air-conditioning systems and the piping and wiring, including such of the foregoing that is found in building units. Partitions, walls, floors and roofs that are not part of a building unit, the foundations or main walls of a building, but which separate a building unit from another building unit or the common property are presumed to be common property, unless there are legal documents to the contrary.

The definition has been changed in the proposed Article, by insuring that those parts of the partitions, walls, floors or roof that are part of a “building unit” are not common property. This was done by adding the words “building unit” to the recitation of foundations or main walls. There is reliance here on the definition of building unit as including the finished surfaces of the walls, floors and ceilings. According to the proposed draft wall, floor and ceiling treatments inside an apartment are part of the building unit, whereas those parts of the walls, ceilings and floors between the finished surfaces are considered to be common property. This is a refinement of what is part of the Civil Code Article 856 (3) above, which states that partitions between two apartments are owned jointly by the owners of the two apartments.

Partitions that are entirely within a building unit are part of that building unit and need not be shown on building plans. An alternative to attempting to enumerate those portions of the immovable that are common property is to simply state that those portions of the immovable that are not building units are common property⁴⁸. This approach was not followed here, because of the cited provision of the Civil Code.

The common property will be shown on the cadastre plan, that is a part of the declaration of co-ownership as required by proposed Article 5 and will be clearly marked as such.

Owner’s Association

Creation of Juridical Entity

It is practice in jurisdictions that have effective divided co-ownership statutes or regulations that an association be formed for the maintenance and management of the co-ownership regime. However, current Egyptian law does not provide for this. The McFadzean report states that “[t]he owners are not compulsorily treated corporately as a juridical person within the meaning in Article 52 of the Civil Code”.

However, the McFadzean report points out that under current Egyptian law apartment owners can form a management association.

⁴⁸ This is the method used in the Uniform Condominium Act in § 1-103 (4). The comment to this section states:

No exhaustive list of items comprising the common elements is necessary...as long as the boundaries between units and common elements can be ascertained with certainty, the common elements include by definition all of the real estate in the condominium not designated as part of the units.

Ministerial Decree 109/1979 states that the association as a juridical person makes simple provision for forms and procedures where an owner opts to join the union. The following apply to the Union:

Powers of the union include to set in place rules for the orderly management and day-to-day operations of the building. This in effect permits management by-laws to be prepared.

Decisions may be made at meetings by majority vote

Power to take out insurance

Appointment and payment of a delegate

Lending to an apartment owner and taking a lien over the apartment⁴⁹

The draft regulation provides for an association of co-owners and the method for establishing this association is consistent with proposals in the McFadzean Report.

The McFadzean report states that Article 856 of the Civil Code provides that “if there are multiple owners of parts of a building then they are deemed to be ‘partners’ in the ownership of the land and the common facilities in the building”⁵⁰. The report goes on to opine that:

The term ‘Partners in ownership’ does not create a partnership or a juridical person under Article 52 of the Civil Code. It simply means common ownership⁵¹.

The draft regulation provides that:

Draft Article 3 (2)

Upon registration of the declaration, the co-owners as a body constitute a legal person, called the syndicate of co-owners, the objects of which are to preserve the immovable, maintain and manage the common portions, protect the rights appurtenant to the immovable or the co-ownership, and to take all measures in the common interest of the co-owners.

The McFadzean report points out that it is common practice that the registration of a declaration automatically creates a legal entity comprised of the co-owners for the maintenance and governance of the divided co-ownership.

[A] ‘strata corporation’ or strata body corporate, being a juridical person formed automatically upon the registration of the plan and consisting of all owners of the apartments in the building, is created under the law. Common property is vested in the juridical person⁵².

⁴⁹ McFadzean report p. 15-16.

⁵⁰ McFadzean report, Appendix 1, p. 36.

⁵¹ Id.

⁵² Id. at p. 10. See also p. 15.

In some jurisdictions a legal entity is formed by filing articles of incorporation with the authority responsible for the registration of corporate entities. This may be required in Egypt as well. However, the proposed draft follows those jurisdictions where the registration of the declaration in the real estate records creates the juridical entity.

Votes and Expenses

Draft Article 9 sets out the rights and obligations of the association of co-owners, but does not set out a mechanism for allocation of votes in the association or the allocation of common expenses. The method for the allocation of the votes and the expenses should clearly be set out in the declaration of co-ownership. The methods for allocating fractional shares, votes, and expenses do not have to be the same as long as the declaration is explicit⁵³.

The draft regulation does have a provision in draft Article 4 (3) that states as follows:

The by-laws of the syndicate of co-owners contain the rules on the enjoyment, use and upkeep of the private and common portions, and those on the operation and administration of the co-ownership. The by-laws also deal with the procedure of assessment and collection of contributions to the common expenses.

The by-laws can, at the same time, deal with the allocation of the votes in the association. We recommend that both of these be described in the declaration of co-ownership and the proposed regulation incorporates this recommendation.

The proposed regulation adds certain mandatory provisions to the by-laws.

Proposed Article 4 (3)

The by-laws of the association of co-owners contain the rules on the enjoyment, use and upkeep of the private and common portions, and those on the operation and administration of the co-ownership. The by-laws also describe the formulas to be used to determine voting rights and allocate the expenses among co-owners and a description of the reallocation of voting rights and expenses in case immovables are added to the co-ownership.

Note that this provision in the proposed draft is inconsistent with Egyptian Civil Code Article 858 (1) and (2) which state, respectively:

⁵³ See for example the Uniform Condominium Act, § 2-107:

The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations.

The 1980 comments state:

Thus, all three allocations might be made equally among all units, or in proportion to the relative size of each unit, or on the basis of any other formula the declarant may select, regardless of the values of those units. Moreover, "size" might be used, for example, in allocating common expenses and common element interests, while equality is used in allocating votes in the association. This section does not require that the formulas used by the declarant be justified, but it does require that the formulas be explained. The sole restriction on the formulas to be used in these allocations is that they not discriminate in favor of the units owned by the declarant. Otherwise, each of the separate allocations may be made on any basis which the declarant chooses, and none of the allocations need be tied to any other allocation.

Civil Code Article 858

1. Each owner shall participate in the costs of maintaining the common parts and in their maintenance, administration, and renewal. His/her share in these costs shall be in proportion of the value of the part he/she owns in the building, unless otherwise provided by agreement.

2. No owner shall relinquish his/her portion in the common parts, for the purpose of ridding him/herself of participation in the foregoing costs.

As explained above, the proposed regulation has opted to give greater flexibility to co-owners for allocating votes and dividing expenses and this has been done with the awareness that this would require an amendment to the Civil Code. Thus, although the proposal suggests an ideal, it may be impractical to amend the Civil Code to achieve the result suggested.

Declaration of Co-ownership

The draft regulation lists the required contents of the declaration of co-ownership in draft Article 4. The first section of draft Article 4 states that the declaration is comprised of the “the legal act of co-ownership, the by-laws of the syndicate, and the cadastre plan”⁵⁴. The contents of the declaration as set out in the draft regulation are fine as far as they go, but it is suggested that certain additional information be also set out in the declaration primarily to deal with the possibility of staged developments⁵⁵, where not all the land available for development is added to the regime with the initial registration of the declaration. Of course, such staged developments can both benefit and burden the rights of the co-owners in the first phase⁵⁶.

Under the proposed regulation Article 2 regarding the contents of the declaration states:

Proposed Article 2 (2)

The legal act of co-ownership includes:

a) a description of the immovable subjected to divided co-ownership, including a description of the real rights affecting or existing in favor of the immovable, other than mortgages;

b) an unambiguous statement of intention to submit the immovable to divided co-ownership under this law;

⁵⁴ The proposed regulation will, of course, use the terminology at discussed earlier in this report.

⁵⁵ There is discussion that one building in Egypt must have only one parcel and this raises a question whether or not there can be common property for co-ownership complex over another parcel or not. If this is not possible it ought to be in order to allow the flexibility of phased or staged developments.

⁵⁶ See the McFadzean report at p. 18 where it is stated that:

Some developers wishing to lower development costs may propose that an apartment complex be undertaken in stages. Apartments in the first building can be sold to finance the construction of a second building, and so on. The intention is generally that, in second and subsequent stages, additional facilities on common property will be created to benefit owners in the first building. As funds become available from early sales, the resources to provide passive and active recreational facilities are available...

A further disadvantage of the existing framework is that Article 22 of the Planning Law 3/1982 prohibits sales “off the plan”. The report recommends a single framework for staged development in the long-term amendments.

- c) a schedule of the co-owners known at the time of registration;*
- d) a description of the immovable, building units, common portions and common portions for restricted use, if any;*
- e) To the extent that any unit or common element encroaches on any other unit or common element due to settling, lateral movement or minor variance of the building between boundaries shown on plans, a valid easement for the encroachment exists:*
- f) a table or tables showing the fractional share of the common property attached to each building unit;*
- g) a description of any restrictions on rights of use, occupancy and alienation of building units;*
- h) a description of immovables that may be added to the co-ownership at different times, together with a statement regulating the order in which those portions may be added and whether these immovables must be added or may be added;*
- i) a statement of the maximum number of units which may be created;*
- j) provisions conforming to the requirements of this law regarding creation, organization and operation of the association of co-owners, including without limitation the name and legal address of the association, its powers and responsibilities, and rules and procedures for governing its financial and other affairs;*
- k) a statement describing the allocation of voting rights and expenses to each building unit, together the formula to apply to calculate at these allocations;*
- l) such other matters that the co-owners deem appropriate and which do not contradict this law.*

By adding clause h) the declaration provides for the possibility of staged development and i) appraises co-owners of the extent to which their fractional shares may be diluted. It is anticipated that the building plans that are registered with the declaration will show possible “additional” immovables that may be added to the regime, and these should be so labeled in the plan. The plan should also label each of these additional parcels as to whether or not they must be added or may be added.

The McFadzean report, however, raises additional issues that must be considered.

[T]he staged development provisions do not clarify (i) who has the right to add extra storeys to a building (ii) what disclosure is to be made to the first purchasers (iii) when the plan is approved, is a revised building plan lodged with the registration authority? Who does the expanded common area vest in? (iv) impact on the value of the existing lots – there is increased usage of the common areas (v) Does the existing common property vest in the purchasers of the newly added apartments (vi) are existing owners required to pay for the upkeep of the additional common property⁵⁷?

⁵⁷ Id.

These issues should be dealt with in the declaration of a divided co-ownership project that expects to add additional immovables.

Cadastre Plan

The draft regulation proposes that a cadastre plan be registered with the declaration (“legal act of co-ownership”) and provides a draft article stating the minimum requirements for this plan. The cadastre plan consists of a location plan, a building plan and a building units plan. The co-ownership plan is registered with the declaration, after having been approved by the Egyptian Survey Authority and separate cadastre numbers must be assigned to the immovable and to each building unit to be part of the divided co-ownership organization. This is consistent with the current Law No. 142 of 1964 (Sigueal El-Ainee).

The law and supporting regulation⁵⁸, enacted but not yet implemented for urban land, envisage that, when the Title Registry law is extended by decree to apply to urban land, individual apartments can be defined in a sketch plan and a separate page of the Sigueal El-ainee register will be prepared for each apartment⁵⁹. These laws and regulations provide a basis on which registration activities to extend the Sigueal El-ainee registry to apartments can be built in the future without further statutory reform⁶⁰. (footnotes in the original)

The McFadzean report also gives the opinion that:

[T]he existing Sigueal El-ainee law and executive regulations⁶¹ make general reference to defining building units in a plan and these were examined. The provisions are not yet in operation⁶²; however, the legislative provisions will, when operational, provide sufficient authority for creating a Cadastral Form for each apartment in the building⁶³.

The matters that must be set out in the building plan are set out in the draft regulation. This must be updated to add items that must be shown on the building plan due to the possibility of staged developments. Draft Article 5 (2) is, therefore modified in the proposed regulation as follows;

Proposed Article 5 (2)
Each cadastre plan must show:
a) A survey or general schematic map of the land and building(s), whether existing or proposed. The plan of survey or general schematic map of the building must clearly indicate the relative location of the separate building units;

⁵⁸ See Articles 8 and 9 of Law 142/1964 and the Executive Regulation for Sigueal El-ainee chapter 3 Section 2.

⁵⁹ See also Article 113 of the same regulation

⁶⁰ McFadzean Report p. 4

⁶¹ See 114/1946 and 142/1964

⁶² Ministerial decree not yet made.

⁶³ McFadzean Report p. 8.

- b) Any proposed improvement shown must be labeled either “MUST BE BUILT” or “NEED NOT BE BUILT”;*
- c) To the extent feasible, a legally sufficient description of all servitudes serving or burdening any portion of the land;*
- d) The identifying numbers of the building units, their approximate location and the approximate dimensions of their vertical and horizontal boundaries, the latter with reference to an established datum;*
- e) Identification by appropriate notation of indicator of the common property, including the approximate location and dimensions of restricted common property;*
- f) A survey or general schematic map of additional land which may be added to the divided co-ownership, clearly labeling such land as “MUST BE ADDED” or “NEED NOT BE ADDED”;*
- g) All other matters customarily shown on land surveys.*

The co-ownership plan must be approved by the Egyptian Survey Authority in advance of the registration of the declaration as provided in the draft regulation and followed in the proposed regulation. The location plan will comply with the Egyptian urban planning laws and regulations⁶⁴. The building units need not be physically measured for the purpose of the cadastre plan. The proposed regulation requires no more than a general schematic map of the building units. While this may be by survey, the proposed regulation recognizes that a survey may be unduly expensive or impractical, and accordingly permits a general schematic map of the building units. Normally, laws regarding divided co-ownership require that the three dimensional space for each building unit be defined. The vertical dimension becomes a difficulty for Egypt in that there is no systematic method for adequately establishing the vertical space. One solution is to allow a simple recitation of the floor (ground floor, first floor, second floor etc.) on the plan, rather than require that measured heights with respect to an accepted datum be prepared⁶⁵. This proposed regulation would allow for the recitation of the relevant story in the building as an adequate “approximate dimension” of the vertical boundary.

Making the plans part of the declaration and thus, registered in the real estate records addresses the criticisms in the observations in the McFadzean report that there is no mechanism for making the plans public⁶⁶. The proposed regulation also provides for the possibility that the building unit owners can own not only the parcel on which their building is

⁶⁴ See McFadzean Report p. 12:

Article 33 of the Ministerial Decree 600/1982 implementing the Urban Planning Law requires a survey map at 1:5000 detailing the location of the land and streets. A map at scale 1:1000 will set out the division of land showing north orientation, land parcels with number, dimensions and area. Lots must be connected to a public road⁶⁴. However, Regulation 2 to the Law Directing and Organising Building Works 106/1976 contains reference to the use of private roads. These survey requirements will apply to ‘bare strata plans’ creating common property ...

⁶⁵ Id. at 19.

⁶⁶ Id. at 8 which states that:

Although Egypt Survey Authority undertakes cadastral survey of land parcels and the measurement of apartments, there is no systematic effort towards the establishment of a public repository of cadastral maps/ registered subdivision plans or building unit plans. Access to building unit plans is important in the operation of the proposed Building Unit Titles. The report recommends progress towards establishing a public repository for all cadastral and index maps, Building Unit Plans and future division of land plans.

situated, but can also own other parcels that may be brought into the divided co-ownership complex⁶⁷. However, this possibility, which will facilitate the implementation of staged developments, may need regulatory or planning law changes.

Law No. 142 of 1964 (Sigueal El-Ainee) and Executive Regulations for Sigueal El-Ainee No. 189:1975 require that a ministerial decision be issued for the region where implemented. Article 66 and Article 68 of that regulation states that:

Article 66

A city consists of one geographic section or several geographic sections. The geographic section consists of one block or several blocks. A block comprises one or many real estate building units⁶⁸ that are adjacent to each other and surrounded by public outlets or rural real estate units or non cadastre units.(areas not adjudicated yet). The real estate building unit is determined as defined in the law.

Article 68

The system in urban areas is to be applied for those regions that a ministerial decision has been issued for. For other regions, the process is delimited to just mapping the sections and the blocks without mapping each individual real estate building unit.

The Egyptian Survey Authority, possibly jointly with the REPD, must issue regulations or instructions that will establish the level of detail that will go into preparation of the cadastre plan.

Registration of Declaration

Draft Article 6 (3)

The immovable subject to divided co-ownership and each of the common portions shall be treated as separate real estate objects for purposes of registration with the Real Estate Publicity Department. The declaration shall be registered against the immovable, and shall be noted in the registration of each private portion as an encumbrance on the ownership right. Amendments to the declaration are entered only with respect to the immovable registration, unless they directly affect a private portion, but amendments made to the by-laws of the syndicate are filed only with the syndicate.

This draft article will not work in a registration system where certificates of title are issued showing the ownership of the real estate unit. It provides that the common portions of the immovable will be treated as a separate real estate object, which implies that a certificate of

⁶⁷ Id.

There is no specific statutory provision for the creation of a subdivision that incorporates both vacant real estate parcels and another vacant land parcel which is to be held in common by the lot owners. This concept is popular in other jurisdictions because it provides great flexibility in the subdivision process, to create lots and shared common property to be used for access and recreation etc. Terminology is defined in the report.

⁶⁸ Note that this does not refer to apartments within buildings. Article 8 of Law No. 142 of 1964 (Sigueal El-Ainee) provides that the Minister of Justice can issue a decree to add to the definition of real estate unit under the law. Such a decree must be issued to define units within buildings as real estate units.

title (*Sahayfa Akariya*) for that object will be issued by the REPD. But, the rest of the draft regulation provides that the common property is owned in fractional shares by the building unit co-owners. A fundamental principle of a registration system is that the certificate of title identifies the owners of the parcel described in that certificate. Where common property it is treated as a discrete real estate object with shared ownership as stipulated in the draft regulation, each owner of a share would have to be listed in the certificate. The shares change over time requiring cancellation of the certificate of title for the common property and issuance of a new one showing new owners⁶⁹.

Where each co-owner owns an undivided share in the common property, there is in fact no need to treat the common property as a separate object of real estate. Once the declaration and cadastre plan have been registered certificates of title need only be issued for the building units. Therefore, the proposed regulation states that a certificate of title for the building units is issued once the declaration is registered, and subsequent conveyances of the individual building units automatically convey the fractional share of the common property⁷⁰.

There are two approaches that can be followed at the time of the registration of the declaration; 1) a certificate of title can be issued showing all the building units and the respective owners, or 2) an individual certificate of title can be issued for each building unit. If the first approach is followed, as individual building units are conveyed, an individual certificate of title for that building unit showing the declaration and other rights and encumbrances that affect that building unit will be issued. A residue certificate will be prepared for the remainder of the units showing the owners who have not conveyed their ownership since the original registration of the declaration. The second approach, which is recommended, is that a separate certificate of title be issued for each building unit upon registration of the declaration showing the declaration and all the rights and encumbrances that affect respective units. This approach makes it easier to deal with mortgages, leases and the like on individual building units. All certificates will state that the building unit is subject to and together with the rights, covenants and conditions as set out in the declaration of co-ownership, together with the fractional share of the common property.

To reflect this draft Article 6 (3) must be revised as in proposed Article 6 (3).

Proposed Article 6 (3)

The declaration shall be registered against the immovable and shall be noted in the registration of each building unit as an encumbrance and together with the common property as stated in the declaration and shown on the cadastre plan. Amendments to the declaration must be registered as to the registration of each building unit. Amendments to the by-laws of the association are filed only with the association.

Rights and Obligations of Co-Owners and Management of Co-ownership

The remainder of the proposed draft has to do with the operation and governance of the regime, disclosure, and withdrawal. These issues are only tangentially related to registration and Task 2. Some Articles have been modified in the proposed regulation without comment,

⁶⁹ This system would work in Australia and other jurisdictions where the title to the common property is vested in the association, but that is not the approach that has been chosen for this regulation.

⁷⁰ See proposed Article 2 (5) and (6).

but two of these provisions have significant real estate title consequences and therefore the following brief comments are in order.

Draft Article 7 (7) allows a court to order the sale of a building unit if the owner violates or refuses to follow a court order ordering an owner to comply with the declaration. To give courts this much power may invite abuse by the courts. The courts might impose sanctions for contempt or apply other remedies that exist under Egyptian law for failure to comply with a court order without granting the draconian power of a compulsory sale of an owner's building unit. It is, therefore, recommended that the last sentence in that article be stricken.

Proposed Article 7 (7)

Where the refusal of a co-owner to comply with the declaration of co-ownership causes serious and irreparable prejudice to the association or to one of the co-owners, either of them may apply to the court for an order ordering the co-owner to comply with the declaration.

Draft Article 9 (2)(j) allows the association to transfer use or ownership of common property to persons who are not co-owners. This may be a good provision, since there are occasions that certain types of conveyances need to be made and it is inconvenient, and, indeed, often impossible to get a document of conveyance from all the co-owners. A good example is where servitudes may be needed by adjoining property owners and, after being duly considered, the association agrees to grant the servitude. In this case, it would be advantageous if the association could grant a valid easement without the joinder of the all the owners.

However, to sell ownership to part of the common property ought to require signatures of all the owners. The proposed draft has been modified accordingly.

Proposed Article 9 (2)(j)

Transfer of use or rights less than ownership in common property to persons who are not co-owners, and impose and receive any payments, fees, or charges for the use, rental, or operation of the common property;

Practical Title Considerations

One of the key questions that cannot be answered without detailed investigation is whether apartment owners in Egypt will start to operate according to the proposed regulation if adopted. For example, will they hold annual general meetings of the association, elect officers, vote on actions of the association board and management in accordance with the provisions of the proposed regulations? Indeed, will they even know that a legal entity has been formed by operation of law upon the filing of a declaration? What happens if no declaration is ever filed? Will the owners of apartments continue to operate they way they have in the past? Will legal descriptions remain the same? Will the land surrounding a building containing apartment units remain in the legal limbo as under present law? This is very likely.

Unless there is some significant incentive for the co-owners to prepare and register a declaration it will probably never be done. One way of way of compelling compliance after a co-ownership regulation is adopted is to make the filing of a declaration (together with cadastre plan) a *sine qua non* to accepting registration of documents regarding individual building units after the regulation has been passed. This, however, is a double-edged sword. On the one hand, it is in the interest of the authorities to make registration as easy

as possible to encourage bringing real estate units into the system, on the other hand, subjecting building unit owners to a legal framework with which they are unaccustomed may act as a deterrent to registration and perpetuate informal conveyancing practices.

Education of the public as to the advantages of an organized and systematic method for dealing with apartments from both a title standpoint and a co-ownership management standpoint, clarifying the issues that are solved by regulations such as the proposed regulation will certainly result in compliance by the better managed co-ownerships.

Appendix

PROPOSED DRAFT REGULATION ON DIVIDED CO-OWNERSHIP OF IMMOVABLES

ARTICLE 1

APPLICATION OF THIS REGULATION

1. Divided co-ownership of an immovable occurs when certain portions of the immovable are owned by specific owners (hereinafter "co-owners") for their use alone and certain portions of the immovable are held in co-ownership of such co-owners for their common use.
2. Immovables constructed and subjected to divided co-ownership after the effective date of this regulation shall comply with the provisions of this regulation. Immovables constructed prior to the effective date of this regulation may be subjected to the provisions of this regulation by agreement of the co-owners.
3. For purposes of this regulation an "immovable" shall include a single building or several buildings comprising part of a unified project, together with the land on which they are located and all real rights existing in favor of it.

ARTICLE 2

FRACTIONAL SHARES

1. Those portions of the immovable that are the property of a specific co-owner bounded by the finished surface of the walls, floors and ceilings and are for his use alone are called the building units.

Those portions of the immovable that are not building units are common property.

Some of the common property may serve the use of only one or more but fewer than all of the building units, and are called common portions for restricted use. The rules regarding the common portions also apply to common portions for restricted use, except as restricted in the declaration of co-ownership.

2. Ownership of the common property is divided into fractions (the "fractional shares") belonging to the co-owners. Each co-owner has an undivided right of ownership in the common property equal to his or her fractional share or shares. The fractional shares

can be equal, based upon the area, or value of the building units or any other method that can be reasonably calculated, as set out in the declaration of divided co-ownership.

3. The following is presumed to be common property unless there are legal documents to the contrary: the land, roof, verandas or balconies, access ways, stairways and elevators, passageways and halls, common service areas, parking and storage areas, basements, foundations and main walls, and common equipment and apparatus, such as the central heating and air-conditioning systems and the piping and wiring.
4. Each building unit constitutes a distinct object of real property and may be alienated in whole or in part. Alienation includes, in each case, the fractional share appurtenant to the building unit, whether described in the document of alienation or not, as well as the right to use the restricted common property, where applicable.
5. The fractional share appurtenant to a building unit may not be alienated separately from the building unit or be the object of an action in partition. Fractional shares are not distinct objects of real property for the purposes of real property assessment and taxation.
6. Alienation of a divided part of a building unit is without legal effect unless the declaration of co-ownership and the cadastral plan have been altered prior to the alienation so as to create a new building unit with a separate cadastral number and associated fractional share.
7. Divided co-ownership of a building that is built on land that is leased or held under a right of construction or other right less than ownership may be created if the unexpired term of the lease or right, at the time of registration of the declaration of co-ownership, is over 50 years and the lease or other right is fully assignable to, and may be registered in the name of, the association of co-owners as required under this regulation. Any such lease or right shall be treated as part of the common property subject to co-ownership. Except as otherwise provided in this regulation, each co-owner, proportionately to his fractional share, is liable for the divisible obligations to the owner of the land, and the association of co-owners assumes the indivisible obligations.

ARTICLE 3

ESTABLISHMENT OF DIVIDED CO-OWNERSHIP

1. Divided co-ownership of an immovable is established by registration with the Real Estate Publicity Department of a declaration of co-ownership.
2. Upon registration of the declaration, the co-owners as a body constitute a legal person, called the association of co-owners, the objects of which are to preserve, maintain and manage the common property, protect the rights appurtenant to the co-ownership, and to take all measures in the common interest of the co-owners.

ARTICLE 4

CONTENTS OF THE DECLARATION OF CO-OWNERSHIP

1. A declaration of co-ownership is comprised of the legal act of co-ownership, the by-laws of the association of co-owners, and the cadastre plan.
2. The legal act of co-ownership includes:

- a description of the immovable subjected to divided co-ownership, including a description of the real rights affecting or existing in favor of the immovable, other than mortgages;
 - an unambiguous statement of intention to submit the immovable to divided co-ownership under this regulation;
 - a schedule of the co-owners known at the time of registration;
 - a description of the immovable, building units, common property and common property for restricted use, if any;
 - To the extent that any unit or common element encroaches on any other unit or common element due to settling, lateral movement or minor variance of the building between boundaries shown on plans, a valid easement for the encroachment exists:
 - a table or tables showing the fractional share of the common property attached to each building unit;
 - a description of any restrictions on rights of use, occupancy and alienation of building units;
 - a description of immovables that may be added to the co-ownership at different times, together with a statement regulating the order in which those portions may be added and whether these immovables must be added or may be added;
 - a statement of the maximum number of units which may be created;
 - provisions conforming to the requirements of this regulation regarding creation, organization and operation of the association of co-owners, including without limitation the name and legal address of the association, its powers and responsibilities, and rules and procedures for governing its financial and other affairs;
 - a statement describing the allocation of voting rights and expenses to each building unit, together the formula to apply to calculate at these allocations;
 - such other matters that the co-owners deem appropriate and which do not contradict this regulation.
3. The by-laws of the association of co-owners contain the rules on the enjoyment, use and upkeep of the building units and common property, and those on the operation and administration of the co-ownership. The by-laws also deal with the procedure of assessment and collection of contributions to the common expenses. The by-laws also describe the formulas to be used to determine voting rights and allocate the expenses among co-owners and a description of the reallocation of voting rights and expenses in case immovables are added to the co-ownership.
 4. The cadastre plan shall contain the information required under article 5 of this regulation.
 5. No declaration of co-ownership may impose any restriction on the rights of the co-owners except restrictions justified by the use, characteristics or location of the immovable.

ARTICLE 5

CADASTRE PLAN

1. A cadastre plan consisting of one or more sheets is part of the declaration of co-ownership. Each plan must be clear and legible and contain a certification of the sponsor that it contains all information required by this section.
2. Each cadastre plan must show:
 - A survey or general schematic map of the land and building(s), whether existing or proposed. The plan of survey or general schematic map of the building must clearly indicate the relative location of the separate building units.
 - Any proposed improvement shown must be labeled either “MUST BE BUILT” or “NEED NOT BE BUILT”.
 - To the extent feasible, a legally sufficient description of all servitudes serving or burdening any portion of the land.
 - The identifying numbers of the building units, their relative location and the approximate dimensions of their vertical and horizontal boundaries, the latter with reference to an established datum.
 - Identification by appropriate notation of indicator of the common property, including the approximate location and dimensions of restricted common property.
 - A survey or general schematic map of additional land which may be added to the divided co-ownership, clearly labeling such land as “MUST BE ADDED” or “NEED NOT BE ADDED”.
 - All other matters customarily shown on land surveys.
3. Portions of the immovable which at the option of the sponsor may not be constructed shall be marked as such on the cadastre plan.
4. Cadastre plans shall be approved by the Egyptian Survey Authority and separate cadastre numbers shall be assigned to each building unit in the manner provided by law. The cadastre plan shall be registered in the surveying book maintained in the REPD or ESA office for the area in which the immovable is located.

ARTICLE 6

REGISTRATION OF DECLARATION

1. A declaration of co-ownership shall be in written form and signed by all the co-owners of the immovable at the time of registration, by the owner of the land on which the immovable is located, and by all the creditors holding mortgages on the immovable. Amendments to the declaration are signed by the association of co-owners.
2. The declaration and any amendments made thereto are deposited in the office of the Real Estate Publicity Department for the area in which the immovable is located.

3. The declaration shall be registered against the immovable and shall be noted as an encumbrance in the registration of each building unit. Amendments to the declaration must be noted in the registration of each building unit. Amendments to the by-laws of the association are filed only with the association.
4. The Real Estate Publicity Department shall issue regulations consistent with this regulation for registration, indexing and archiving of declarations, immovables subject to divided co-ownership and building units of such immovables, taking into consideration differences between areas subject to Law 142:1964 (Siguel El-Ainee) and areas subject to Law 114:1924 (Deeds Registration).
5. The registration of a legal act against a building unit is valid against the fractional share of the common property appurtenant to the building unit whether or not the fractional share of the common property is described or not.
6. The declaration binds the co-owners, their successors and the persons who signed it, and produces its effects towards them from the time of its registration.

ARTICLE 7

RIGHTS AND OBLIGATIONS OF CO-OWNERS

1. Subject to the provisions of this regulation and the declaration of co-ownership, each co-owner has the right:
 - to use his building unit and the common property for his own needs as well as for the needs of his family and household;
 - without the approval of the association or any other co-owner, to transfer his building unit to any other person by sale, lease, gift, bequest, devise, pledge or mortgage or any other manner permitted by law;
 - to participate in the management of the co-ownership in accordance with the provisions of the declaration and by-laws;
 - to elect and be elected to the association's governing boards and committees; and
 - to have and exercise other rights that do not contradict this regulation that are provided by law or the declaration.
2. Each co-owner is obliged:
 - to observe the declaration and by laws;
 - to observe all laws and regulations pertaining to the divided co-ownership; and
 - to contribute to costs of maintaining and operating the immovable, including the contingency fund, in proportion to his fractional share.
3. Only the co-owners who use common property for restricted use contribute to the costs resulting from those portions.

4. A co-owner who gives a lease on his building unit shall notify the association and give the name of the lessee.
5. No co-owner may interfere with the carrying out, even inside his building unit, of work required for the conservation of the common property approved by the association, or of urgent work, each co-ownership will grant access to his building unit at reasonable times for the conduct of such work.
6. A co-owner who suffers damage by the carrying out of work, through a permanent diminution in the value of his property, a grave disturbance or deterioration of enjoyment, even if temporary, is entitled to compensation from the association if the association ordered the work or, if it did not, from the co-owners who did the work.
7. Where the refusal of a co-owner to comply with the declaration of co-ownership causes serious and irreparable prejudice to the association or to one of the co-owners, either of them may apply to the court for an order ordering the co-owner to comply with the declaration.

ARTICLE 8

PHYSICAL ALTERATIONS

1. Subject to the provisions of the legal act of co-ownership, any mortgage encumbering a building unit, and other provisions of law, a co-owner may:
 - make improvements or alterations to his building unit that do not damage or impair the common property or any other building unit;
 - not change the appearance of the common property, or the exterior appearance of a building unit, without permission of the association;
 - after acquiring all or part of an adjoining building unit, remove, alter or create apertures in any intervening partition if those acts do not impair the structural integrity or mechanical systems of the common property or another building unit or lessen the support of any portion of the common property;
 - relocate the boundaries between adjoining building units, combine two or more building units or subdivide an existing building unit into two or more portions by an amendment to the legal act of co-ownership upon approval of the association and the co-owners of any affected building units.
2. At the expense of the co-owners applying for relocation of boundaries, combination or subdivision of building units, the fractional shares will be reallocated among co-owners as necessary and the association will prepare and register necessary amendments to the legal act of co-ownership to show the subdivided building unit or altered boundaries between adjoining building units, their dimensions, identifying numbers, and the amendments to the fractional shares of such building units.

ARTICLE 9

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION OF CO-OWNERS

1. The association of co-owners acts through the general meeting of co-owners or the board of directors as provided in this regulation and the legal act of co-ownership.

2. Unless otherwise provided in this regulation or in the legal act of co-ownership, a association of co-owners may:
- adopt and amend rules and regulations;
 - adopt and amend budgets;
 - elect a Board of Directors;
 - hire and discharge managers;
 - elect from among the co-owners an independent audit committee and select independent auditors to review and certify the financial affairs of the association;
 - take loans to support the activities of the association;
 - acquire immovable property, including building units, through purchase or otherwise;
 - arrange for the expansion and construction of the immovable;
 - terminate the co-ownership;
 - transfer of use or rights less than ownership in common property to persons who are not co-owners, and impose and receive any payments, fees, or charges for the use, rental, or operation of the common property;
 - institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or co-owners on matters affecting the co-ownership;
 - make contracts and incur liabilities;
 - hire and discharge employees of the association and other independent contractors;
 - regulate the use, maintenance, repair, replacement, and modification of common property;
 - collect payments for common expenses from co-owners, and impose charges for late payment of assessments;
 - levy reasonable fines for violations of the declaration, by-law and rules and regulations of the association;
 - open and manage any financial accounts of the association with banks or other financial institutions;
 - invest funds of the association not needed for daily operations;
 - exercise any other powers conferred by this regulation or the legal act of co-ownership or that may be exercised under the laws of the Republic of Egypt by legal entities of the same type as the association; and

- subject to the legal act of co-ownership and this regulation, exercise any other powers necessary and proper for the governance and operation of the association.
3. The powers enumerated in paragraphs (a) through (j) of the foregoing paragraph of this article may be exercised only by vote of the co-owners at a general meeting, and all other powers of the association may be delegated to the board of directors.
 4. The day-to-day administration of the association may be entrusted to a manager chosen from among the co-owners or otherwise. The manager acts as the administrator of the property of others charged with simple administration.
 5. The association keeps at the disposal of the co-owners a register containing the name and address of each co-owner and each lessee of a co-owner; the minutes of the meetings of the co-owners and of the board of directors; the financial statements of the association; the declaration of co-ownership; copies of the contracts to which the association is a party; the plans and specifications of the common property and all other documents relating to the co-ownership and the association.
 6. Each year, upon the recommendation of the board of directors or the manager, the association fixes the respective contributions of co-owners for common expenses, after determining the sums required to meet the expenses arising from the co-ownership and the operation of the common property, and the amounts to be paid into the contingency fund. The association, without delay, notifies each co-owner of the amount of his contribution and the date(s) when it is payable.
 7. Upon the recommendation of the board of directors or the manager, the association establishes, according to the estimated cost of major repairs and the cost of replacement of common property, a contingency fund to provide cash funds on a short-term basis allocated exclusively to such repairs and replacement. The association is the owner of the fund. The contribution of the co-owners to the contingency fund is at least 5 % of their contribution for common expenses. In fixing the contribution, the rights of any co-owner in the common property for restricted use may be taken into account.
 8. The association has an insurable interest in whole common property. It shall take out insurance against ordinary risks, such as fire and theft, on the whole of the common property, except improvements made by a co-owner to his part. The amount insured is equal to the replacement cost of the common property. The association shall also take out third person liability insurance. Non-observance of a condition of the insurance contract by a co-owner may not be set up against the association.
 9. The indemnity owing to the association following a substantial casualty loss to the common property and shall be paid to a trustee appointed in the legal act of co-ownership or, where none has been appointed, designated by the general meeting of co-owners. The indemnity shall be used to repair or restore the damaged property, unless the association decides to terminate the co-ownership, in which case the trustee, after determining the share of the indemnity of each of the co-owners, pays the mortgage creditors and for each of the co-owners remits the balance of the indemnity to the liquidator of the association with his report.
 10. A building unit does not cease to be private by the fact that it is acquired by the association, but the association has no vote for that building unit at the general meeting and the total number of votes that may be given is reduced accordingly.
 11. A judgment requiring the association to pay a sum of money is executory against the association and against each of the persons who were co-owners at the time the cause of action arose, proportionate to his fractional share. A judgment may not be executed

against the contingency fund, except for a debt arising from the repair or the replacement of common property.

12. The association may demand the termination of the lease of a building unit, after notifying the lessor and the lessee, where the non-performance of an obligation by the lessee causes serious prejudice to a co-owner or to another occupant.
13. The association, within six months of being notified by the owner of land on which the co-ownership is located that he intends to transfer his rights to the land, may acquire such rights in preference to any other potential acquirer during that period. If it is not notified of the planned transfer, it may, within six months from the time it learns that a third person has acquired the owner's rights, acquire such rights from that person by reimbursing him for the price of transfer and the costs he has paid.
14. The association holds a lien in the nature of a mortgage against the building unit of any co-owner for unpaid common expenses and other assessments of the association. Such lien is superior to the lien of any other creditor, except that the amount of such lien that is superior to the rights of a mortgage registered against the building units is limited to the amount of common expenses attributable to the common property for the period of 3 months under then budget then in effect.

ARTICLE 10

BOARD OF DIRECTORS OF THE ASSOCIATION

1. The co-owners may elect a board of directors, which shall be the executive body of the association accountable to the general meeting of co-owners. The composition of the board of directors of the association, their mode and term of appointment, replacement and remuneration, and their powers and responsibilities are fixed in the by-law of the association.
2. Decisions of the board are taken by majority vote of members present and voting at the meeting at which a quorum of fifty percent (50%) of the members of the board are present.
3. The court, on the motion of a co-owner, may appoint or replace a director and fix his terms of appointment if there is no provision in the by-law or if it is impossible to proceed in the prescribed manner.
4. The day-to-day administration of the association may be entrusted to a manager chosen from among the co-owners or otherwise. The manager acts as the administrator of the property of others charged with simple administration.
5. A director or the manager may be replaced by the association if, being a co-owner, he neglects to pay his contribution to the common expenses or to the contingency fund.

ARTICLE 11

OFFICERS OF THE ASSOCIATION

1. The chairman of the board of directors is elected by the board from among its members. The chairman of the board is the chief executive officer of the association and the chairman of the general meeting of co-owners. In the chairman's absence meetings of the board and the general meeting are chaired by other persons or officers of the association designated by the board.

2. The association may provide in the legal act of co-ownership for such other officers of the association as may be necessary, including without limitation one or more deputy chairmen, a treasurer, and a secretary.
3. The chairman of the board of directors may act for the association in its transactions. The powers and authority of other officers of the association are defined in the legal act of co-ownership.

ARTICLE 12

GENERAL MEETING OF THE CO-OWNERS

1. The general meeting of co-owners may exercise all of the powers of the association. The powers of the general meeting may be delegated to the board of directors or to committees of the board or the general meeting, in accordance with the legal act of co-ownership and the by-law.
2. An annual general meeting of co-owners must be held at least once in each fiscal year of the association within sixty (60) days of the start of the fiscal year. Special meetings may be called by the board of directors or co-owners holding at least ten percent (10%) of the fractional shares.
3. The notice calling the annual general meeting of the co-owners shall be accompanied by the summary financial results for the preceding fiscal period, a statement of outstanding debts and claims, the budget forecast for the coming fiscal period, any proposed amendment to the declaration of co-ownership and a summary on the general terms and conditions of any proposed contract or planned work to be approved by the meeting.
4. Within five days of receiving notice of a general meeting of the co-owners, any co-owner may cause a question to be placed on the agenda. The board of directors shall give written notice of the questions newly placed on the agenda to the co-owners before the meeting.
5. Co-owners holding forty percent (40%) of the fractional shares present or represented by legal proxy constitute a quorum at the general meeting. If a quorum is not reached, the meeting is declared adjourned to a later date, notice of which is given to all the co-owners, and at the second meeting decisions taken are binding on co-owners even in the absence of a quorum.
6. Unless otherwise provided in this regulation or the legal act of co-ownership, decisions of the association are taken by a majority of the co-owners present or represented at the meeting.
7. Each co-owner is entitled to a number of votes at a general meeting proportionate to his fractional share. The undivided co-owners of a fractional share vote in proportion to their undivided shares.
8. Any co-owner who has not paid his share of the common expenses or his contribution to the contingency fund for more than three months is deprived of his voting rights.
9. No holder of an assignment of the voting rights of a co-owner which has not been declared to the association may be eligible to vote.
10. Decisions respecting the following matters require a majority vote of the co-owners representing seventy-five percent (75%) of the fractional shares of all the co-owners:
 - acts of acquisition or alienation of real property by the association;

- work for the alteration, enlargement or improvement of the common property, and the apportionment of its cost;
 - the construction of immovables or the creation of new fractional shares;
 - the amendment of the legal act of co-ownership or of the schedule of fractional shares;
 - change of the use of the common property.
11. Where the number of votes available to a co-owner or a sponsor is reduced by the effect of this regulation, the total number of votes that may be cast by all the co-owners to decide a question requiring a majority in number and votes is reduced by the same number.
 12. Any stipulation of the declaration of co-ownership which changes the number of votes required in this article for taking any decision is legally ineffective.
 13. Any decision of the association which, contrary to the declaration of co-ownership, imposes on a co-owner a change in his fractional share, a change of his building unit or a change in the use he may make of it is without effect.
 14. Any co-owner may apply to the court to annul a decision of the general meeting if the decision is biased, if it was taken with intent to injure the co-owners or in contempt of their rights, or if an error was made in counting the votes. The action is forfeited unless instituted within 60 days after the meeting. If the action is futile or vexatious, the court may condemn the plaintiff to pay damages.

ARTICLE 13

RIGHTS AND OBLIGATIONS OF A SPONSOR OF DIVIDED CO-OWNERSHIP

1. A sponsor of a divided co-ownership is any person who, individually or through affiliated persons or entities, at the time of registration of a declaration of co-ownership, owns one-half or more of all the fractional shares, or his successors, except that a person who in good faith acquires a fractional share for a price equal to its market value with the intention of inhabiting it, is not considered to be a successor of a sponsor.
2. No sponsor of a co-ownership comprising four or more fractional shares is entitled, in addition to the voting rights attached to the fractional share serving as his residence, to over forty-nine percent (49%) of all the votes of the co-owners at the end of the second year after the date of registration of the declaration of co-ownership, and no more than twenty-five percent (25%) at the end of the third year after registration.
3. Within 90 days from the day on which a sponsor of a co-ownership ceases to hold a majority of voting rights in the general meeting of the co-owners, the board of directors shall call a special meeting of the co-owners to elect a new board of directors. If the meeting is not called within 90 days, any co-owner may call it.
4. At the general meeting called to elect a new board of directors the sponsor shall render an account of its administration of the association, including the financial statements, which shall be accompanied with the comments of an accountant who has been provided by the sponsor with access to the books, accounts and vouchers concerning

the co-ownership. The accountant shall, in his report to the co-owners, indicate any irregularity that has come to his attention.

5. The new board of directors may, within 60 days of the election, terminate, without penalty, a contract for the maintenance of the common property or for other services entered into before the election by the association, where the term of the contract exceeds one year.
6. During the time that a sponsor holds voting control over the association the sponsor shall not be required to make contributions to the common expenses in proportion to the fractional shares held by it, but alternatively shall fund the difference, if any, between the amounts collected from the co-owners other than the sponsor and the actual operating costs of the co-ownership. Notwithstanding the foregoing, the sponsor shall be obligated to make contributions to the contingency fund in proportion to its fractional shares.
7. A sponsor may reserve in the legal act of co-ownership the following rights:
 - to construct or add additional building units or common property to the co-ownership and adjust the fractional shares accordingly, but only to the extent specified in the legal act of co-ownership and the cadastre plan;
 - to own building units of the divided co-ownership;
 - to have and use a general construction easement over the land and the common property to complete construction;
 - to maintain sales offices and signs and management offices in the building units owned by the sponsor;
 - to appoint or remove any member of the board of directors or any officer of the association during the time when the sponsor retains voting control over the association.
8. No change or modification to the provisions of the legal act of co-ownership dealing with the rights of the sponsor may be made without the consent of the sponsor.
9. Where a defendant sets up the failure to act with diligence against an action based on a latent defect in construction of the common property, such diligence is appraised in respect of the association or of a co-owner from the day after the sponsor loses voting control of the association.
10. A sponsor shall complete all improvements identified in the declaration and depicted on the cadastral plan and not noted as subject to the sponsor's discretion. The sponsor is subject to liability for the prompt repair and restoration to a condition compatible with the remainder of the common property of any portion of the common property damaged or destroyed by the sponsor's continuing construction activity.
11. Prior to commencement of sales of building units and fractional shares the sponsor shall provide for the release of any mortgages or liens in the nature of security which encumber the building units or common property, and the building units and fractional shares shall be conveyed free and clear of all mortgages and liens other than those to which the purchaser has agreed.
12. Prior to commencement of sales of building units and fractional shares the sponsor shall convey to the co-ownership, in the name of the association, the sponsor's rights to the land on which the co-ownership is located, free and clear of mortgages or other liens in the nature of security for amounts claimed for purchase or use of the land, other than

rental payments to a third party lessor under a lease of the land for a duration of fifty (50) years or more as provided in article 3 of this regulation.

13. Neither the association nor any co-owner is liable for any claims made against the association which arise during any period that a sponsor holds voting control over the association, or which are related in any way to the exercise of any rights reserved to the sponsor in the legal act of co-ownership, and the sponsor indemnifies the association and the co-owners against any such claims.

ARTICLE 14

SALE OF BUILDING UNITS AND FRACTIONAL SHARES

1. Where a building unit under divided co-ownership which comprises at least four (4) building units is sold, a seller who is a sponsor shall give the purchaser an offering memorandum at the time of signing the preliminary contract of purchase and sale.
2. The offering memorandum shall contain:
 - the names and addresses of the sponsors and builders;
 - a plan of the overall project;
 - a summary of the descriptive specifications of the common property and the building units;
 - a budget forecast for operation of the divided co-ownership;
 - information on arrangements made for the management of the divided co-ownership, if any;
 - information on any real rights or other rights, limitations or restrictions which encumber or affect the ownership right to the building units or common property;
 - a copy or summary of the declaration of co-ownership and of the by-law of the association of co-owners.
3. The budget forecast shall be prepared on the basis of one year of full occupancy of the building units beginning on the date of registration of the declaration of co-ownership. A budget includes, in particular, a statement of debts and claims, revenues and expenditures and common expenses. It also indicates, for each fractional share, the likely amount of real estate taxes, the rate of such taxes and the annual expenses payable, including, where applicable, the contribution to the contingency fund.
4. No sponsor of a undivided co-ownership may offer to sell, contract to sell or sell a building unit and its fractional share until the declaration has been registered as required under this regulation and a registration file has been opened in the Real Estate Publicity Department for each building unit.
5. Failure of the sponsor to comply with the requirements of this article renders any contract for sale of a building unit null and void at the discretion of the purchaser at any time prior to actual completion of the sale, and return of any earnest money payment or other deposit made by the purchaser with interest at the legal rate from the time made.
6. A selling co-owner who is not a sponsor must prior to completion of the sale furnish to a purchaser copies of the declaration of co-ownership, any rules and regulations of the association, a copy of the association's current budget and financial statement, and a

certificate containing a statement of the amount of assessments for common expenses against the portion sold; the amount of any unpaid common expense currently due and payable with respect to the portion, and of any other fees or charges payable by the co-owner of the portion. The association shall provide the documents and certificate required under this paragraph within ten (10) days of request from a co-owner, subject to reasonable payment for the costs of reproduction.

7. A person who acquires a building unit and its fractional share by whatever means including the exercise of a mortgage right, is bound to pay all common expenses due in respect of that fraction at the time of the acquisition. A purchaser of a building unit and fractional share is not liable for any unpaid common expenses, assessments or fees in excess of the amounts shown in the sales certificate of the association prepared in accordance with paragraph 6 of this article.
9. No offering memorandum or sales certificate must be provided in the case of transfer of a building unit as a gift; a transfer pursuant to a court order; any transfer by a government or government agency acting in its capacity as such and not in a commercial capacity as sponsor; a transfer of a building unit used exclusively for non-residential purposes; or a transfer by mortgage foreclosure.

ARTICLE 15

PROTECTION OF MORTGAGE CREDITORS

1. The association may enter into agreements with creditors holding mortgages on any building unit of the co-ownership by which the association agrees:
 - to give written notice to the creditor of any state of facts or occurrence which actually or potentially affects adversely the physical or financial condition of the co-ownership;
 - to give written notice of any delinquency in the payment of common expense by the co-owner of a building unit on which the creditor holds a Mortgage, or any intention of the association to enforce its claim to collect common expenses against a building unit;
 - not to amend any material provision of the legal act of co-ownership without the consent of the creditors holding mortgages on the building units;
 - not to take specified actions concerning the co-ownership without the approval of the creditors holding mortgages on the building units, including without limitation conveying or encumbering any of the common property; termination of the co-ownership; or pledge or assignment of the future income or receivables of the association;
 - upon the request of any mortgage creditor, to provide a copy of the current financial statements of the Association; or
 - such other matters on which the association and mortgage creditors may agree and which do not contradict this regulation.
2. Agreements for the benefit of mortgage creditors may be included in the legal act of co-ownership, in which case they will constitute contractual obligations of the association toward any present or future mortgage creditor holding a mortgage on any building unit of the co-ownership.

3. Upon acquiring ownership of a fractional; share through enforcement of its rights under a mortgage, a mortgage creditor succeeds to all rights and obligations of a co-owner.

ARTICLE 16

TERMINATION OF CO-OWNERSHIP

1. Divided co-ownership may be terminated by a decision of a majority of seventy-five percent (75%) of the co-owners representing 90 % of the fractional shares.
2. The decision to terminate the divided co-ownership shall be recorded in writing and signed by the association and the persons holding hypothecs on any part of the building units or common property. This decision is entered in the land register under file of each of the building units.
3. The association is liquidated according to the rules of Egyptian law regarding the liquidation of legal persons.