

Myanmar Companies Law 2017

On 6th December 2017, the Myanmar Companies Law 2017 (“MCL”) was passed to replace the Myanmar Companies Act 1914 (“MCA”) in order to modernize the current legal structures of companies and enhance foreign investment in Myanmar.

1. Overseas Corporation

“Overseas corporation” means a company incorporated outside Myanmar. In order to carry on business in Myanmar, overseas corporations must be registered under the MIL in Myanmar.

If an overseas corporation carries on the following activities, it will not be deemed as doing business in Myanmar:-

- (i) entering into or settlement of any legal proceeding, claim or dispute;
- (ii) holding meetings of its directors or shareholders;
- (iii) maintaining a bank account;
- (iv) lending money and securing of and/or collecting debts;
- (v) conducting an isolated transaction that is completed within a period of 30 days; and
- (vi) investing of its funds or holding any property.

2. Small Company

“Small company” means:-

- (i) a company itself and its subsidiaries having not more than 30 employees; and
- (ii) a company itself and its subsidiaries having the annual consolidated revenues in the previous financial year of less than MMK50 million or other amount to be prescribed under the MCL.

A small company is not subject to some filing obligations and corporate matters specified in the MCL, e.g. filing of the financial statement, holding an annual general meeting of the shareholders.

3. Constitutional Documents

The company must have its Constitution in the Myanmar language or the English language. It is

no longer required to have a Memorandum of Association (“**MOA**”) and an Articles of Association (“**AOA**”).

The MOA and the AOA of the existing companies registered under the MCA will take effect as the Constitution of such company under the MCL and may continue to apply only to the extent that the contents contained therein are not inconsistent with the MIL.

4. Objectives

A company established under the MCL is no longer required to specify its objectives for business operation.

The objectives specified under the MOA of the existing companies registered under the MCA will continue to apply until the end of the transitional period. After the transitional period, the said objectives will deem to have been removed unless a notice confirming that a special resolution of the company has been passed to maintain its objectives is filed with the Registrar.

5. Permit to Trade

A company registered under the MCL is not required to hold a Permit to Trade. Only a Certificate of Incorporation will be issued and used for operating its business in Myanmar.

6. Shares, Shareholders and Foreign Ownership Ratio

A company can issue different classes of shares and securities. There is no minimum par value of shares. A private limited company can have only one shareholder.

Foreigners can now hold up to 35% of shares in local companies in Myanmar. Any company having more than 35% of its shares held or controlled by overseas corporation, foreign company or foreign individual or both directly or indirectly will be classified as a “foreign company” under the MCL.

A prior approval from the authority is not required for foreigners to purchase the shares in a local company or a foreign company in Myanmar. But a notice must be filed with the Registrar within 21 after the registration of the share transfer and it must be specified in the said notice if the company has become or ceased to be a foreign company.

7. Director and Company Secretary

A private limited company registered under the MIL must have at least one director who is ordinarily resident in Myanmar.

A company that has only one director is not required to hold a board of directors meeting. But such director must pass each resolution in writing and sign it.

A company may appoint a company secretary and have a common seal.

8. Annual General Meeting

A company must hold a general meeting of the company's shareholders within 18 months from its registration date and thereafter at least once a year but not more than 15 months after the previous meeting. The company's auditor must also attend the general meeting.

9. Dividend

Dividend payment can be determined by the board of directors of the company. The company cannot declare dividend payment unless:-

- (i) the company satisfies the insolvency test immediately after the dividend payment;
- (ii) the dividend payment is fair and reasonable to its shareholders as a whole; and
- (iii) the dividend payment does not materially prejudice its ability to repay its debts to the creditors.

10. Transitional Period

Transitional period shall be up to twelve (12) months from the effective date of the MCL.

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