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**MYANMAR CORPORATE
SECRETARIAL BOOKLET
2023**

Get to the point.

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Published by VDB Loi Co., Ltd April 2023
Version 1.0

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A. OVERVIEW

The Myanmar Company Law 2017 ("**MCL**") was passed in late 2017 to replace the old Myanmar Company Act 1914 ("**MCA**") and add certain reforms to the regulation of companies in Myanmar. The MCL went into effect on 1 August 2018.

Following effectiveness, an electronic company registry system called MyCo was introduced. It allows the registration of entities and the filing of corporate changes with the Registrar (i.e. the Directorate of Investment and Company Administration ("**DICA**")) online instead of in person.

Forms of establishment

Below are the types of corporations that can be registered in Myanmar in accordance with the MCL:

- Company limited by shares (either a private or a public company)
- Company limited by guarantee
- Unlimited company
- Business association ("**BA**")
- Overseas corporation
- Other types of corporations that are entitled to be registered under other applicable laws in Myanmar

Other useful definitions

Foreign company

Under the MCA, a Myanmar company was defined as one that is 100% owned and controlled by Myanmar citizens. The MCL changed this definition to allow foreigners to hold up to 35% in a Myanmar company (i.e. Myanmar citizens must hold 65% or more). In short, a company in which a foreigner has a direct or indirect ownership of up to 35% is still considered a Myanmar company under the MCL. A company is considered a foreign company if the direct or indirect foreign ownership is more than 35%.

Small company

A small company is a company that is not a public company or a subsidiary of a public company and meets the following two conditions:

- (i) It and its subsidiaries have no more than 30 employees; and
- (ii) It and its subsidiaries had annual revenue in the prior financial year of less than MMK50 million (approximately US\$23,800) in total.

Small companies are entitled to two exemptions from the normal annual compliance requirements:

- (i) Exemption from holding an annual general meeting (“**AGM**”) every year. A small company can simply pass a written shareholders’ resolution in lieu of calling and holding the meeting.
- (ii) Exemption from having to have their financial statements audited annually.

Ordinarily resident

MCL defines a person as ordinarily resident if they have resided in Myanmar for at least 183 days of the past 12 consecutive months.

B. PRIVATE COMPANY LIMITED BY SHARES

Essential provisions

There are certain requirements for a private company limited by shares under the MCL. We highlight below the key provisions.

Minimum capital

There are no minimum capital requirements under the MCL. A company can be registered with only one share issued. There are also no authorized capital requirements.

Shares

Companies can issue different classes of shares with different rights and benefits. Below are the types of shares that can be issued:

- Ordinary shares
- Redeemable shares
- Preference shares
- Other classes of shares as defined in the company's constitution

The MCL does not specify any requirements regarding a share's par value.

Directors

The MCL requires that companies have at least one ordinarily resident director. A minimum of one director is required and there is nothing specified on the maximum number of directors. Directors must be natural persons. There is no concept of a corporate director under the MCL.

Shareholders

The MCL requires a minimum of one shareholder and a maximum of 50 shareholders. Shareholders can be individuals or entities.

Constitutional documents

Companies can adopt the model constitution issued by the DICA or they can customize certain provisions of the model constitution as allowed under the MCL and register such customized constitution with the DICA.

Corporate secretary

This is not compulsory, but is allowed. The corporate secretary must be a natural person.

Registered office address

Companies must have a registered office address in Myanmar. All notices and communication will be addressed to the registered office address. Companies do not need to carry on their business at the registered office address.

Business objectives

Companies are not required to declare their business objectives in the constitution or during the registration process. However, they are required to declare their main business objectives when they file their annual return ("AR") (see further details under the compliance section below).

Shareholders' decisions and meetings

Shareholders' meetings

There are three types of shareholders' meetings under the MCL:

- AGM: This is held each year to review and approve the normal annual business of the company, such as annual reports and business plans.
- Special general meeting: This is any other meeting of the shareholders except the AGM.
- Statutory meeting ("**SM**"): This is applicable only to a public company and a company limited by guarantee with share capital (see further details in Section D).

Shareholders' decisions

Decision of shareholders can be done through either an ordinary resolution or a special resolution, depending on the provisions of the MCL and the company's constitution.

- Ordinary resolution: This is a resolution that requires the affirmative votes of a simple majority to pass (i.e. requires more than 50% of the votes).
- Special resolution: This is a resolution that requires the affirmative votes of at least 75% of the votes to pass.

Directors

Duties of directors

Directors are those appointed by the shareholders of the company to manage the company's day-to-day business. The main responsibilities of the directors are to:

- Determine and implement the company's policies.
- Prepare and file all required notices with the DICA and other governmental authorities.

- Determine the dividend to be distributed to the shareholders.
- Maintaining and keeping records as required by the MCL.
- Call for shareholders' meetings.

Directors also have the following legal duties under the MCL:

No.	Duty	Explanation
1	Duty to act with care and diligence	Act in good faith and do not have a material personal interest in making the decision.
2	Duty to act in good faith in the company's best interests	Act in the best interests of the company for a proper purpose.
3	Duty regarding use of position	Do not use their position to gain a personal advantage or to harm the company.
4	Duty regarding use of information	Do not use information obtained as a director to gain a personal advantage or to harm the company.
5	Duty to comply with the law and constitution	Understand the obligations of directors under the MCL and constitution and comply with them in making decisions.
6	Duty to avoid reckless trading	Do not allow any activities that could create substantial risk of serious loss to the company's creditors.
7	Duty in relation to obligations	Do not allow the creation of any obligation for the company unless it can be assured that the company will be able to perform such obligation if required.
8	Duty to disclose certain interests	Disclose any material personal interest that might lead to a conflict of interest.

A director that breaches any of the above duties will be subject to a fine of MMK10 million (approximately US\$4,760) or any additional amount that the court may determine in accordance with the MCL.

Directors' approval

Directors can call for a directors' meeting to discuss and approve a resolution. A simple majority of the votes of the directors present is required to pass a resolution. Otherwise, a resolution can be passed by written resolution. In the case of a written resolution, the approval of all directors is required.

Compliance

Annual compliance

(i). Annual return

The AR is a prescribed form issued by the DICA in accordance with the MCL. The AR consists of 12 questions to confirm that the company details maintained by the DICA as shown in MyCo are complete and up to date.

All companies are required to file an AR through MyCo within two months from its incorporation and then every year, not later than one month from the anniversary of its incorporation.

Failure to file an AR on time will lead to the suspension of the company's registration. If the suspension is not rectified within six months from the date of suspension, the company will be struck from the DICA's registry.

(ii). Audit of financial statements

All companies except for small companies must appoint an external auditor to audit their financial statements annually for presentation at the AGM. However, private companies limited by shares are not required to file their audited financial statements with the DICA.

(iii). Annual general meeting

All companies except for small companies are required to hold their first AGM within 18 months from the incorporation date and then once every calendar year and not later than 15 months from the previous AGM.

An AGM is held to consider and approve the following matters:

- Annual financial report and directors' report
- Audited financial statements issued by the auditor
- Appointment of the auditor (if any)
- Election of directors (if any)

(iv). Maintenance of corporate records and registers

All companies are required to maintain the corporate records and registers specified under the MCL. The registers should be kept at the registered office address or the principal place of business or at the office of the person appointed to maintain the company's registers. A company's records and registers must include:

- Register of members
- Register of directors and corporate secretary (if any)
- Minutes of meetings and resolutions
- Register of mortgages and charges
- Company's constitutional documents

Failure to comply with this requirement will lead to a penalty ranging from MMK150,000 (approximately US\$71) to MMK10 million (approximately US\$4,760), depending on the specific non-compliance.

Corporate changes

Companies are required to file a notice with the DICA for any changes in corporate details. We have summarized the main filings in the table below:

No.	Description	Timing
1	Change of director	Within 28 days of the change
2	Change of shareholder	Within 21 days of the change
3	Change in share capital	Within 21 days of the change
4	Change of company name	Within 28 days of the approval of the change
5	Change in the company's constitution	Within 28 days of the approval of the change
6	Change of the registered office address	Prior to the effective date of the change
7	Notice of change of location where company registers and records are kept	Within 21 days
8	Registration of mortgage or charge	Within 28 days

No.	Description	Timing
9	Modification of a particular mortgage or charge	Within 28 days
10	Satisfaction of a mortgage or charge	Within 28 days
11	Filing in relation to a related party transaction	14 days and 28 days

Late filing fees

Late filing fees are imposed on late filings, and are calculated based on how late the filing is done.

No.	Days late	Late fee (MMK)
1	1 to 90 days	25,000
2	91 to 180 days	50,000
3	Over 180 days	100,000

Overview of approval authority (shareholders versus directors) for a private company limited by shares

Matters requiring approval from the shareholders	Matters requiring approval from the board of directors
Appointment/resignation/removal of directors	Transfer of shares
Appointment of auditor	Appointment of managing director
Financial statements	Dividend declaration
Change of the company's name	Related party transaction
Change in the company's constitution	Issuance of shares (except preference shares)
Share buyback or share reduction	Other matters that do not require approval from the shareholders
Issuance of preference shares	
Change of company type	

Matters requiring approval from
the shareholders

Matters requiring approval from the
board of directors

Remuneration paid to directors

Related party transaction (this is
applicable only if approval from the
board of directors is not obtained)

Voluntary winding up

C. OVERSEAS CORPORATION

Overseas corporation

Pursuant to Section 43 of the MCL, an overseas corporation will not be deemed to be carrying on business in Myanmar in the following cases:

- Acting as a party to legal proceedings or the settlement of legal proceedings or a claim or a dispute.
- Holding meetings of its directors or shareholders or carrying on other activities concerning the management of its internal affairs.
- Maintaining a bank account.
- Effecting a sale of property through an independent contractor.
- Soliciting or procuring an order that becomes a binding contract only if the order is accepted in Myanmar.
- Lending money, creating evidence of a debt, or creating a charge on the property.
- Securing or collecting any of its debts or enforcing its rights in relation to securities relating to those debts.
- Conducting an isolated transaction that is completed within a period of 30 days.
- Investing its funds or holding property.

Requirements for registration

An overseas corporation must not carry on business in Myanmar unless it is registered. It must appoint a person to act as its authorized officer for the office in Myanmar. The authorized officer must be ordinarily resident in Myanmar.

Compliance

Annual filings

All overseas corporations are required to file the following with the DICA annually:

- (i) Annual return: within 28 days from the end of its financial year.
- (ii) Financial statements, which must include a balance sheet, cash flow statement, and profit and loss statement.

All directors and the authorized officer of the overseas corporation will be liable for a fine of MMK250,000 (approximately US\$119) for any failure to comply with such filing requirements.

Corporate changes

All overseas corporations are required to file a notice with the DICA for any changes in corporate details, including:

- (i) Change in directors and directors' details
- (ii) Change of the registered office address or principal place of business overseas
- (iii) Change of the registered office address or principal place of business of the overseas corporation in Myanmar
- (iv) Change in the authorized officer and the authorized officer's details

All directors and the authorized officer will be liable for a fine of MMK250,000 (approximately US\$119) for any failure to comply with such filing requirements.

Ceasing to carry on business in Myanmar

When an overseas corporation ceases carrying on business in Myanmar it must file an application requesting deregistration with the DICA within 21 days of the cessation of business. The application will be approved by the DICA within 60 days from the filing date. Upon approval by the DICA, the status on MyCo will be changed to deregistered. The DICA will then remove the name of the overseas corporation after a certain period of time.

The overseas corporation must also clear all of its liabilities with other governmental authorities, such as with the Internal Revenue Department, before it is considered fully deregistered.

If the overseas corporation is also liquidating or is dissolved in its place of origin, it must conduct the same full winding-up process, including the appointment of a liquidator, as for a company (see Section F below).

D. COMPANY LIMITED BY GUARANTEE

Essential provisions

Share capital

A company limited by guarantee does not need to have share capital.

Members

A company limited by guarantee can have any number of members. The liability of the members is limited by the amount of the guarantee.

Directors

There must be at least one ordinarily resident director. There is no regulation regarding the maximum number of directors.

Constitutional documents

A company limited by guarantee is required to have its constitution registered with the DICA. It must be prepared in the Myanmar language.

If the company will not have share capital, the constitution should state the guarantee amount and the undertaking of members to contribute to the assets of the company in the event of winding up.

If it will have share capital, the constitution should state the class of shares that the company is going to issue and the currency denomination of such shares.

Dividend declaration

A company limited by guarantee does not declare dividends.

Compliance

Companies limited by guarantee also have certain annual compliance and filing requirements under the MCL.

Annual return

Like a company limited by shares, a company limited by guarantee is required to file ARs. The first AR is due within two months from incorporation and then every year, not later than one month from the anniversary of its incorporation.

Audit of financial statements

Like for companies limited by shares, companies limited by guarantee are also required to appoint an external auditor to audit their financial statements every financial year.

Statutory meeting

A company limited by guarantee that has share capital must hold a general meeting of its members (called an SM) within the period of not less than 28 days or more than six months from its incorporation date.

A company limited by guarantee that does not have share capital is required to hold an AGM each year like a company limited by shares.

Requirements of an SM

There are certain matters that companies must comply with when organizing an SM:

- Directors must circulate the statutory report to the members at least 21 days before the date the SM will be held.
- If the company has more than one director, the statutory report must be certified either by at least two directors, or by the chairperson of the directors, who is authorized to do so by the board of directors.
- The statutory report, as far as it related to the shares allotted by the company, the cash received in respect of such shares, and all other amounts received and paid out by the company is certified as correct by the auditor of the company.
- A copy of the certified statutory report must be registered with the DICA after it is sent to the members.

All directors will be liable for a fine of MMK250,000 (approximately US\$119) for any violation of the above requirements.

Corporate changes

The same as for other corporate forms, a company limited by guarantee is required to file a notice with the DICA for any change in its corporate details such as directors, members, or registered office address.

E. BUSINESS ASSOCIATION

Under the MCL, BAs are established mainly for the purpose of promoting commerce and developing projects. BAs should not be established for profit-earning purposes.

Form of registration

A BA established under the MCL will be registered as a company limited by guarantee.

Business association categories

There are four levels of BAs; they are classified based on the number of directors and their nationality:

- (i) A BA is classified as a union-level BA if:
 - (i). The majority of directors are foreigners; or
 - (ii). At least seven directors are Myanmar citizens from seven different states/regions of Myanmar
- (ii) A BA is classified as a state- or regional-level BA if the majority of its directors are residents of the relevant state or region.
- (iii) A BA is classified as a district-level BA if the majority of its directors are residents of the relevant district.
- (iv) A BA is classified as a township-level BA if the majority of its directors are residents of the relevant township.

Essential provisions

Minimum capital

There is no minimum capital required for a BA.

Members

BAs must have at least one member and there is no restriction on the maximum number of members. Members can be foreigners or Myanmar citizens.

Directors

The minimum requirement is one director and there is no regulation regarding the maximum number of directors. BAs must have at least one ordinarily resident director.

Guarantee amount

There is no requirement regarding the minimum or maximum guarantee amount for each member. However, the guarantee amount that each member is willing to provide should the BA be wound up should be clearly stipulated in the BA's constitutional documents.

Business objectives

BAs are required to stipulate their business objectives in their constitution.

Constitutional documents

A BA must have its own constitution that is registered with the DICA. There is not a separate model constitution for BAs. The BA can use the model constitution for a private company limited by shares and make certain required amendment accordingly.

Corporate Secretary

A BA may appoint a corporate secretary; however, it is not compulsory.

Compliance

Like companies, BAs have certain compliance requirements.

Annual return

A BA is required to file an AR within two months from the date of incorporation and then every year, not later than one month from the anniversary of its incorporation.

Audit of financial statements

BAs are not considered small companies under the MCL. Therefore, they are required to have their financial statements audited every financial year.

Annual general meeting

A BA is required to hold its first AGM within 18 months from the date of incorporation and then every year, but not later than 15 months from the previous AGM.

Corporate changes

Like companies, BAs are required to file a notice with the DICA in the event of any changes in their corporate details.

F. WINDING UP A COMPANY IN MYANMAR

A company can close down by conducting the winding-up process. The winding-up process will be done in accordance with the Myanmar Insolvency Law (“**IL**”), which supersedes the section on winding up in the MCL. There are two main types of winding up:

- Voluntary winding up: This can be either by the members’ voluntary winding up or the creditors’ voluntary winding up.
- Compulsory winding up: This is normally by court order.

No.	Type of winding up	Situation	Appointment of liquidator
1	Member voluntary winding up	• Company is solvent.	Company appoints the liquidator.
2	Creditor voluntary winding up	• Company is insolvent; or • Company is transiting out of rehabilitation.	Creditors appoint the liquidator. If they do not appoint one, the company will do so.
3	Winding up by the court	• Company is insolvent and is done through a special resolution of the company; or • Company is insolvent and the court is satisfied that it is in the public interest or it is just and equitable that the company be wound up.	Liquidator to be nominated by the applicant or appointed by the court.

Who can be a liquidator?

Only an insolvency practitioner (“**IP**”) registered in accordance with the IL can be appointed as a liquidator.

IPs must be registered and obtain a member registration certificate from the Myanmar Association of Insolvency Practitioners.

What does the liquidator do?

- Carries on business, pays debts, negotiates payment settlements, disposes of properties, disclaims properties, and makes distributions
- Reports to the DICA if the winding up of the company will not be concluded within one year after its commencement
- Holds a final meeting of the members before dissolution
- Finalizes the dissolution with the DICA

Claims and priority of claims

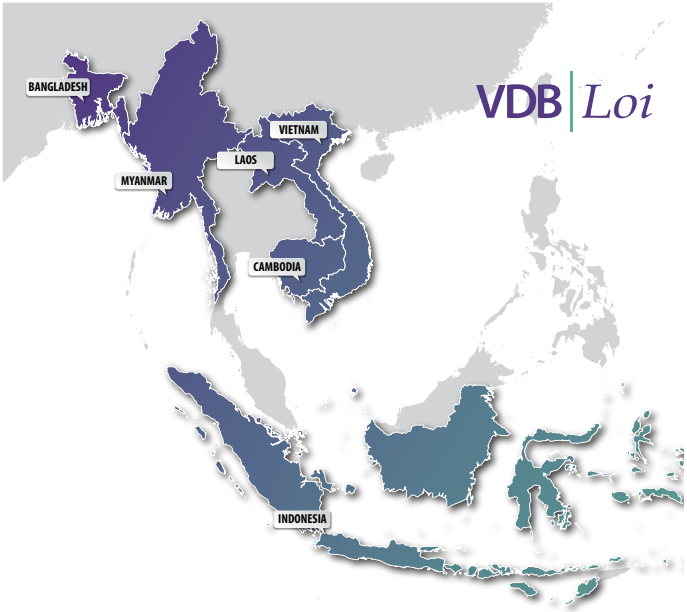
The IL provides the order and priority for a company to settle its debts and claims. Taxes payable to the government is no longer the first priority in the list. Under the IL, claims must be paid in the following order when winding up a company:

- The IP's fees and expenses
- Wages, salaries, and remuneration paid to relevant employees in respect of work performed before the commencement of the winding up
- Amounts to be paid to relevant employees in relation to leave for the period before the commencement of the winding up
- Severance entitlement to relevant employees
- Compensation for any injured employees
- Payments to secured creditors
- Other debts

Filing of winding up with the DICA

As part of the winding-up process (i.e. voluntary winding up), the company is required to file with the DICA in the prescribed form on MyCo the following:

- Notice of appointment of liquidator: This form must have attached: (i) the IP's consent to the appointment together with their IP certificate and; (ii) the directors' declaration of solvency (for member voluntary winding up). The filing must be done within two business days from the appointment of the IP.
- Liquidator's final reporting: This filing must be done within a week after the date of the final meeting of the members before dissolution. The form must have attached: (i) the liquidator's report on the company's accounts; (ii) the final tax clearance obtained from the tax authorities; and (iii) a copy of the meeting minutes of the final meeting.



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There are three things you need to know about our approach:

1. We deliver the ultimate in ground connectivity.
2. Our quality is trusted by the most discerning.
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