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CORPORATE M&A MYANMAR UPDATE 2018

**THE NEW MYANMAR
COMPANIES LAW:**
WHO WINS AND WHO LOSES?

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MYANMAR PRACTICE OVERVIEW

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He advised international financial institutions on their largest Myanmar transactions so far, oil and gas supermajors, a greenfield multibillion US\$ telecom project and the Japanese Government on the Thilawa SEZ. He assisted two newly licensed foreign banks setup in Myanmar, acted for the sponsor of an 800MUS\$ urban infrastructure PPP project and worked on 5 out of 7 power deals inked in 2016. He lives in Yangon since 2012.



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WHOLESALE, RETAIL, INSURANCE AND FINANCE POISED FOR INVESTMENT AND ACQUISITIONS IN THE WAKE OF THE NEW COMPANIES LAW

Myanmar's economy is already quite open to foreign investment, but the few areas previously entirely closed to foreign ownership have just – nearly all- been opened as well. The new Companies Law 2017 allows, as the reader will by now already know, up to 35% foreign shareholding in any company with Myanmar national shareholders without that company losing its status as a "Myanmar company", thereby effectively opening up previously closed parts of the economy to foreign minority ownership. The new definition of a Myanmar company, through the backdoor of defining a foreign company as a company exceeding 35% ownership interest, potentially opens prospects for foreigners to hold an actual equity stake in previously closed off industry sectors, such as trading or distribution, insurance, finance companies, banking and (so was thought initially) companies holding immovable property.

This new possibility will the most immediate be felt in the insurance, the finance and the distribution sectors. Let us take a look at each one of these industries to assess if Myanmar is indeed on the verge of an M&A wave.

How does it work?

The National Assembly dropped in a provision which sheds serious doubts on the possibility for foreigners to hold 35% shares in companies holding an **immovable property** or a lease exceeding one year. S. 464 MCL adds that "the provisions of this Law relating to foreign companies shall not affect the operation of any provision of Transfer of Immoveable Property Restriction Act, 1987 ("TIPRA"). TIPRA has its own definition of a "foreigner owned company", which reads: *"a company or partnership organization whose administration and control is not vested in the hands of the citizens of the Union or whose major interest or shares are not held by citizens of the Union"*. Despite that TPRA refers to *"major interest or shares"*, it has been applied by the authorities as referring to *"any interest or share"*. The effect of s. 464 seems to be that the MCL's definition of a Myanmar company, which includes companies that have up to 35% foreigner owners, does not in and of itself play for TIPRA purposes.

This also means that existing call option structures or convertible loans to Myanmar companies with a

restricted activity can, if parties so wish, be converted into actual equity provided the stake would not exceed the prescribed 35%.

ACTION POINT: If you are a foreigner with quasi-equity interests (such as convertible loans, call options, beneficial ownership) in Myanmar companies with restricted activities, you should look into converting these to actual equity not exceeding 35%. The converted portion will strengthen your legal position considerably. If you have interests exceeding 35%, please beware of the new definition of ownership interests, as it may force you to declare the company as being foreign (see below).

Insurance

Having opened the market to nationally owned privately held insurance companies after decades of state-owned monopoly through Myanma Insurance, the industry is still in its infancy. The Government has announced it would allow foreign insurance companies to operate in the whole of Myanmar (a small exception in the Thilawa SEZ having been allowed in 2015 but the expectation is that joint ventures with local insurers would be required for general insurance (non-life), which is in fact the bulk of the revenue of the sector in Myanmar today. The 13 existing local insurance companies on their part would welcome fresh capital and international know how, but they also require a more liberal regulation of their own products and operations.

Foreign insurance companies or other shareholders were to date not allowed to buy a stake in a Myanmar insurance company, and they are not permitted to operate in (or with) Myanmar without going through the monopolist Myanma Insurance. The 2017 Companies Law brings that situation to an end. Effective immediately, so it seems, a foreigner would now be allowed to buy up to 35% in any insurance company. Given that they cannot access the market without a JV, at least, that seems to be the plan, there may indeed be quite some interest in negotiating JVs with the local players in this space. Even without a legal requirement to have a local partner, some foreign insurance companies will prefer to partner up, we believe.



PRIVATE EDUCATION OPENS TO 100% FOREIGN INVESTMENT

The Myanmar Investment Commission recently issued a notification (Notification 7/2018) on investment in the education sector.

The notification defines private schools as those that are not operated by the state. Most private schools in Myanmar are presently associations (business associations that are not for profit). This notification allows foreign direct investments through subsidiaries in Myanmar who may open new private schools and provide quality international curricula.

Types of private schools include basic education, technical, vocational & training, higher education, subject-based as well as other schools designated by the ministry. Private schools must still comply with the Myanmar Investment Law and Rules, as well as the National Education Law (2014).

A new education law (2014) is currently being drafted and will include more details on school compliance and registration. [Read more about this here.](#)

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He assisted on two of my projects in Myanmar and
has been first rate."***

- IFLR 1000

Finance

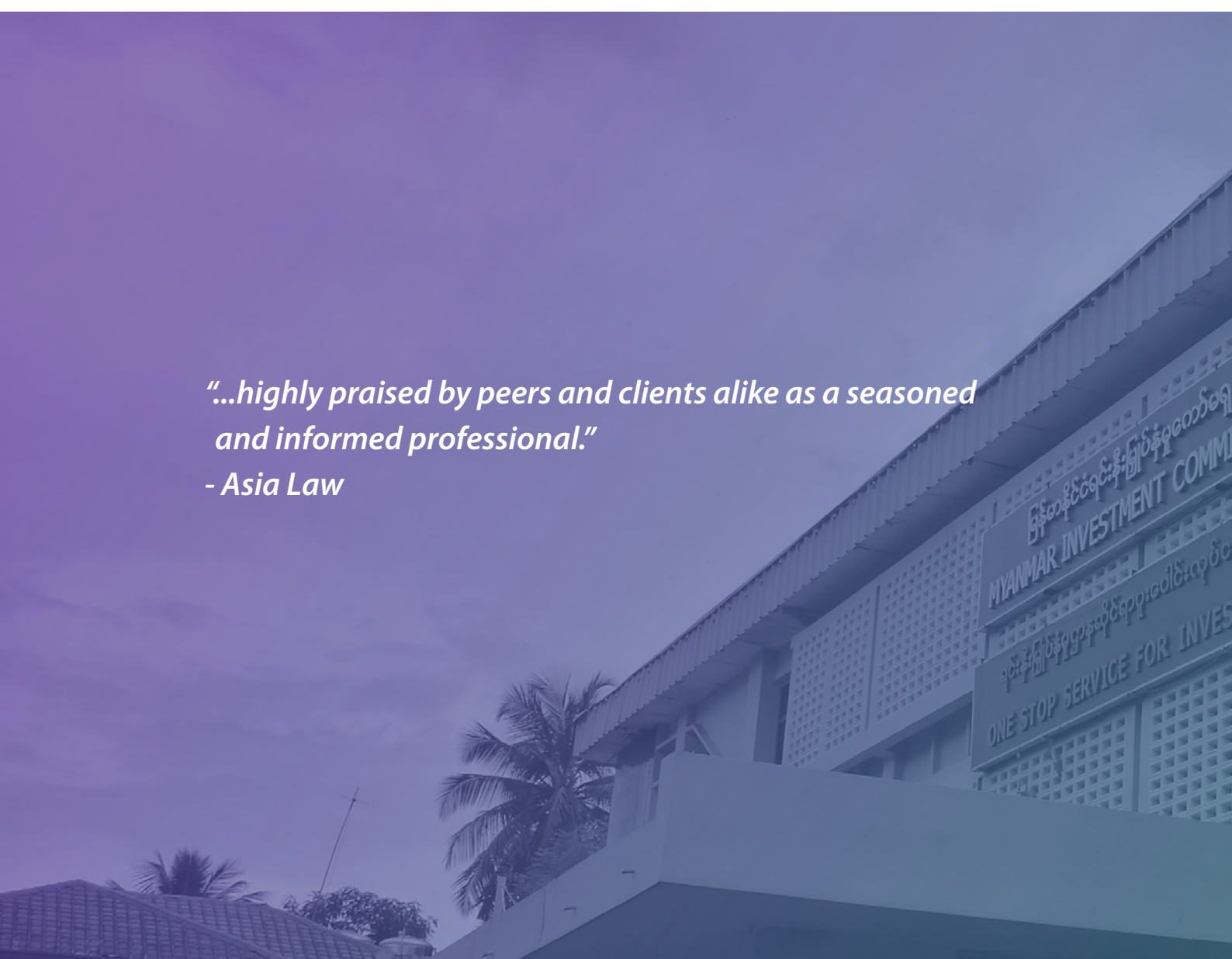
In theory, the same applies to Myanmar's private banks. With close to 25 nationally owned private banks in operation, there have been a number of non-definitive tie-ups discussed between local and foreign players. In theory, the Companies Law 2017 also applies to them, just as to any other Myanmar nationally owned company. Is a wave of bank JVs just around the corner? Perhaps, but the situation is more sensitive even than for insurance. In the insurance sector, promised of increased foreign access to the sector have been made from years ago. And, more importantly, the Government ran two processes to grant local branch licenses to a total of 13 foreign banks. It has been a different strategy from the one we saw in the insurance sector, which was just opened to private sector involvement in 2013. The Companies Law will certainly trigger some renewed questions and perhaps a renewed lobby effort in favour of foreign ownership in Myanmar banks, that is clear. But

perhaps the decision has not yet been made whether this moment is the right one.

There is, we believe, likely less sensitivity with respect to finance companies. Over 20 companies have been licensed as a non-bank financial institution with the activity of a finance company, but not all are active. Also here, foreigners have showed an interest to insert equity to find their remarkable expansion, but they were not permitted to proceed. Until now, that is. It seems likely to us that foreigners can now purchase existing shares or subscribe to new shares of finance companies as per the Companies Law 2017.

Distribution

The largest industry sectors that are still closed off to foreign ownership (with a few exceptions) are wholesale and retail. In fact, a company carrying on any trading activity whatsoever is, or was, not permitted to have foreign shareholders. Any foreign shareholding



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- Asia Law

at all. This exclusion has triggered a wide range of structures in Myanmar, some more fanciful than others, where foreign joint venture partners somehow somehow get around this regulatory restriction without being in breach of it.

So, this was seen as one of the largest beneficiary of a fresh wave of M&A activity. Existing structures, setup when the foreign partner could not hold any shares at all in the trading company, which can now be revisited and cleaned up with an actual equity participation. Or, perhaps more importantly, new entrants seeking to team up with local partners to import and distribute a wide range of products and goods. Fuel and FMCG are high on the list of sought after trading businesses, but there are of course many more.

The whole retail and wholesale sector was then shook up again in 2018 with the issuance of Notification 25 on 9 May 2018 liberalizing foreign investments

through wholly foreign owned companies and joint ventures, subject to requirements on minimum investment in inventory.

To many foreigners, 35% may still not be enough, but that is not the point. The M&A activity we see developing in the next year will not be led by those investors. It will be driven by those foreigners who want to get into the market one way or another, but who previously felt that holding 0% equity is not secure enough. There is a huge difference in risk between having no shares at all, and having 1%, let alone 35%. You are a shareholder, that is what matters, and no one can kick you out. You can use the flexibility of the Companies Law 2017 (the old Act did not so bad either) to shape profit shares and voting rights however you want. But you can't do that if you are not a shareholder to begin with.



ITS NOT ALL GOOD NEWS: WHO LOSES UNDER THE NEW COMPANIES LAW?

Loser 1: Overseas corporations, because they are far more likely to require a Myanmar branch or a subsidiary than before

Under the 1914 Myanmar Companies Act, only foreign companies with “an established place of business” in Myanmar required a Myanmar registration. Many overseas companies without facilities, assets, offices or another place of business in Myanmar, such as **engineers, construction companies, oilfield service providers, technical consultants, advisors**, have previously taken the view that the 1914 Myanmar Companies Act did not require them to register commercially.

The language of the MCL is stricter. Any overseas corporation “carrying on a business in Myanmar” (“COBIM”) requires a registration. COBIM is not defined, but there is a negative list. Most of these are obvious cases where few people would argue that the overseas corporation is COBIM, such as becoming party to a legal proceeding or holding a meeting. S. 43 (a) (viii) implies *a contrario* that any number of similar transactions would be deemed COBIM, and that one transaction which lasts longer than 30 days would also be deemed COBIM.

The MCL indicates several exceptions in the form of activities that are not deemed as ‘*carrying on business*’ in Myanmar. Accordingly, if a company engages, *inter alia*, in any of the following activities, registration is not required:

- Maintaining a bank account;
- Conducting an isolated transaction which is completed within 30 days; or
- Investing funds or holding property.

The MCL provides that an overseas corporation or any other body corporate must not carry on business in Myanmar unless it has registered under the MCL. This could have onerous implications on a wide range of companies, such as drilling and other service companies, which may now need to register under the MCL when they were not previously required to do so.

ACTION POINT: All overseas companies with activities in Myanmar without a branch or a subsidiary need to re-examine their compliance with Myanmar law. Those without an established place of business in Myanmar but with regular operations or an operation exceeding 30 days, are potentially within the scope of the new provision.

Loser 2: Majority shareholders who like their minorities quiet

The MCL adds two causes of action that shareholders of the company may take; the first is a cause of action to address oppressive conduct by the company against the applicant shareholder’s interest. The second cause of action is one allowing, for the first time in Myanmar, intervention in proceedings to which the company is a party.

The right to sue is vested in any member of the company (i.e., any person who holds a **share** in the company) who has received a share either by operation of law or by will. This means that holding just one share entitles a member to bring the above causes of action.

At best, these tools are an effective means of protection for minority shareholders; however, at worst, they will provide opportunities for obstruction and petty account settling.

The MCL contains a certain number of provisions that may protect the company against frivolous lawsuits, e.g., requiring the claimant to act in good faith or in the interest of the company. However, these provisions are still abstract and it will be up to the courts to make them effective. In the short term, companies are well advised to keep the circle of shareholders as small and controlled as possible.

Loser 3: Companies who are dormant

The MCL implementation is used to clean house at DICA. There are too many companies registered who are inactive. In the wake of the MCL, all companies need to take some action to stay intact and to stay in business. First and foremost, all companies need to re-register with DICA under the new automated “MyCo” system in order to avoid being stricken (discussed in detail elsewhere in this publication).

Furthermore, the MCL indicates that the memorandum and articles of association in existence under the previous Myanmar Companies Act 1914 (the “**1914 Act**”) shall automatically be converted into one ‘constitution’. This is meant to avoid unnecessary costs for existing companies.

However, there is a catch. A great majority of companies refer to the default provisions contained in Table A of the 1914 Act. The MCL provides no guidance as to how such references should be treated. Are they void because they refer to an abolished law? If so, then an important number of corporate issues would be regulated by the default provisions of the MCL. On the other hand, is the reference to Table A valid because its provisions can still be consulted and applied? Then the company’s constitution would deviate from the MCL on certain issues. It should be noted that both interpretations appear plausible.

The question is not merely academic. Take pre-emptive rights as an example: the 1914 Act and Table A grant the existing shareholders a right to acquire newly issued shares to avoid dilution of their participation in the company. Under the MCL, such right is not granted by default but must be contained in the constitution. Depending on the interpretation of the reference to Table A, a shareholder may or may not enjoy a pre-emptive right.

Unless the rules to be issued after the enactment of the MCL provide clear and authoritative guidance, companies should consider amending their constitution and removing the reference to Table A. They may then replace their existing articles of association with the new template if and when this template is available.

Loser 4: Companies who have no representatives who are resident in Myanmar

The MCL provides that a company registered pursuant to the MCL must have “*at least one director who must be ordinarily resident*” in Myanmar. The MCL requires that in order for a director to be considered a resident director in the proper sense, such “person”, which may extend to legal persons, must be resident in Myanmar for at least 183 days during every calendar year.

Companies might find this requirement unduly burdensome in practice, as it means that companies would need to arrange for a full-time resident director in Myanmar. According to the MCL, companies established under the 1914 Act will have until the end of the Transition Period to appoint a resident director.



KEY THINGS YOU NEED TO KNOW ABOUT YOUR MYANMAR COMPANY AFTER THE NEW COMPANIES LAW

The long awaited new Companies Law 2017 (“MCL”) finally came into force in August 2018. Here, we provide you with a brief overview of the facts you need to know with regard to the new law. The key pointers are provided and we see how they compare vis-à-vis the 1914 Myanmar Companies Act.

You can restructure from two shareholders to just one shareholder

The MCL replaces the previous requirement of having at least two shareholders. In practice, this meant that one single shareholder could not hold a company for 100% and typically had to give one share to a director or to another company. The MCL now allows for only one shareholder, thereby getting rid of the unnecessary complication caused by the former two shareholder requirement. So, the MCL replaces the old requirement of having at least two shareholders. In practice, this meant that a company could not hold 100% and typically had to give a 1% to a director or other companies. The MCL now allows for only one shareholder, thereby getting rid of the unnecessary complication caused by the former two shareholder requirement.

Consequently, company structuring will be simplified, allowing for 100% ownership in companies, negating having to give a minority interest by law.

ACTION POINT: Companies effectively held by one and the same shareholder having an obligatory second shareholder just for form, should take the opportunity to transfer the one share to the majority shareholder. Look into the potential tax consequences (stamp duty and 10% capital gains tax).

There is a new approval procedure for (existing and) future guarantees or loans to a related party

A company may, subject to its constitution, grant loans to directors and, more to the point in the Myanmar situation, related parties. It may also give guarantees for debts incurred by related parties and other financial benefits (s. 187 MCL).

The condition is that the board has to pass a resolution, issue a certificate, and charge an arm's length fee, full disclosure on the terms, and the item is entered in the register of conflicts s. 187 MCL. In addition, under s. 188 MCL the shareholders have to approve and a notice must be filed with Registrar 28

days in advance. The related director or party may not vote on the meeting approving the loan or guarantee.

Not following the prescribed procedure or lacking reasonable grounds result in personal liability (for the benefitting director) or loan becomes immediately payable.

ACTION POINT: Verify if the company has any related party loans or guarantees. These will have to be put through the approval procedure, which involves lodging a notice with the Registrar. Also, note for financing transactions in preparation that a new compliance requirement may apply.

Mortgages and charges of immovable property to foreigners

S. 228 (b) MCL features an attempt to make it possible for foreigners to receive a mortgage or a charge on immovable assets in Myanmar without any concerns about the Transfer of Immovable Property Restriction Act ("TIPRA"). TIPRA prohibits transfers, leases exceeding a term on one year and mortgages of immovable property to foreign nationals. The idea is that a foreigner can take a mortgage or a charge over a Myanmar immovable property, but in case of enforcement the foreigner cannot become the owner. He can just find a Myanmar national buyer and collect the sales price from the enforcement proceeding.

A provision (s. 464 MCL) inserted during debates at the National Assembly, is raising a question on the correct application of mortgages to foreigners. S. 464 MCL adds that *"the provisions of this Law relating to foreign companies shall not affect the operation of any provision of [TIPRA]"*.

The text of s. 464 MCL looks awfully like a note exactly on s. 228 MCL in the Public Consultation Paper of the Companies Law, which reads as follows: *"this section does not affect the restriction in TIPRA which would prevent the sale of immovable property to a foreigner"*. Along the lines of the note in the Public Consultation Paper, it seems to us the purpose of s. 464 MCL is to confirm beyond all doubt that an actual transfer to a foreigner would not be permitted. S. 228 MCL has not been deleted and must be deemed to have effective operation if the legislator left it intact. In that sense, the better interpretation is in our view to read s. 464 as *"Except for s. 228, the provisions of this Law relating to foreign companies shall not affect the operation of any provision of TIPRA"*.

The language of s. 228 MCL raises the possibility that foreigners might no longer need an Onshore Security Agent ("OSA") to secure immovable property in Myanmar. The provision refers to *"the exercise of rights by or on behalf..."*. The "on behalf" refers to situations involving an OSA, the "by" might refer to all other

situations. It is nevertheless possible that the use of an OSA is obligatory for other reasons, such as a regulatory requirement set by the Central Bank of Myanmar.

Myanmar companies with indirect foreign interests may have to declare they are foreign

An "ownership interest", which is only used in connection with the definition of a foreign and thus also Myanmar company (the infamous new 35% threshold), is now defined as including also "equitable" or "prescribed" interests in a company. "Equitable" refers to trusts. If a Myanmar citizen owns shares as a trustee for a foreigner, this is an ownership interest which counts as "foreign". The concept connects to voting rights. If a foreigner has a direct or an indirect right to exercise control over the voting rights for resolutions of the company, through an agreement, then that would qualify as an ownership interest.

Who is affected? Myanmar companies held by trustees for foreigners or where foreigners can influence decision making.

ACTION POINT: Any affected Myanmar companies carrying on restricted activities should unwind their arrangements providing equitable interests or voting rights to foreigners, or dispose of their restricted activities.

Restructure into an onshore holding company?

S. 5 (c) MCL states explicitly that a company may act as a holding company, which has been controversial for foreign owned companies up to now. Invariably, foreign investors will to date hold their shares in Myanmar registered companies directly from overseas holdings.

That might now change. Foreign investors might, so it seems from the text of the MCL, form onshore holding companies to invest in one or more companies in Myanmar.

ACTION POINT: It may be attractive for certain foreign investors to hold their various Myanmar interests through an onshore holding company. Look into whether this new structuring option is feasible for you.

Dealings between the company and third parties

The legal framework of contracts between the company and third parties has undergone a major shift. The board still decides by majority (or as otherwise determined by the constitution) but third parties, dealing with persons of the company who normally have authority, need no longer verify if the company has followed the proper authorization process. This means, for example, that in many cases, when a contract has been agreed or an order placed by directors or officers of the company, the third party may assume that these directors or officers had proper authority. The third party would not necessarily need a signed board resolution to make the contract binding on the company.

A person may assume that the company's constitution has been complied with, that directors and officers have the authority they normally have. A company may execute a document with 2 directors or a director and a company secretary s. 29 MCL.

ACTION POINT: Your company may be ensnared in legal obligations in circumstances which previously did not result in the company being bound. Check the risks you may be incurring by representations made by the company and its officers.

New capital-in-kind procedure

Any non-cash consideration for issued shares is permissible under the Companies Law (also provided for in 1914 Myanmar Companies Act as "shares issued otherwise than in cash"). No expert valuation is required. The board needs to determine the present cash value of the contribution and make a resolution to state that the consideration is fair and reasonable and not less than the assessed cash value. There is a fine applicable, not limiting general liability for the directors.

Board authority in connection with share transfers

According to the previous DICA AOA template, the directors of a company have a wide discretion to refuse to register share transfers. The MCL now states that company "shall enter" the name of the transferee in the share register (s. 83 MCL). Company must not register "unless it is in the prescribed form, duly stamped and executed, and delivered with the share certificate and a declaration on foreign person. For the board to refuse on any other reason, this must be expressly in the constitution or other law or MCL, and must set out the reason within 21 days.

ACTION POINT: Assess whether you want the board authority to remain or not. Lenders holding a share pledge consider insisting this is eliminated through a new constitution.

Extractions of cash and profit

The MCL provides in cash or profit extractions through dividend, share buy-back, and capital reduction.

To proceed with an extraction, the same three-part test applies: (1) solvency test (= company is able to pay debts as become due + assets exceed liabilities), and (2) fair and reasonable to shareholders as a whole, and (3) does not materially prejudice ability to pay creditors (which is if not the same, at least very similar to solvency test).

Who decides? Dividend: the board determines, others by ordinary resolution if they are "equal", special resolution if they are "selective" operations.

Reduction of share capital and share buy-back requires published advanced notice to Registrar and publication in newspaper.

Moving shares within corporate groups

A company may not issue shares to its own subsidiary. Furthermore, the transfer of shares in a company to a subsidiary is not allowed either. Similarly, the company may not take security over shares in its own holding company or security over its own shares (s. 137 MCL).

Meetings by distance are possible now, but you will need to state so in your (new) constitution

The MCL provides that members may use any technology available to conduct meetings. But, it needs to be so mentioned in the constitution, which DICA template does not have at this time. S. 151 (j) MCL.

A written notice 21 days in advance is still required (28 in case of a public company). The exception is that with consent by all members the time period may be shorter.

A director resolution may be passed by circular resolution without a meeting if all the directors who are entitled to vote sign a document with the resolution.

A member meeting of a private company may be passed by circular resolution without a meeting if all the members who are entitled to vote sign a document with the resolution.

ACTION POINT: Check your AOA, and update to allow for meetings by distance. Otherwise, they are not allowed.

Minority shareholders in joint ventures or in public companies may now take action like never before

The MCL has introduced the concept of "oppression" of

a minority by a majority in Myanmar company law. Acts that are unfairly prejudicial or discriminatory to one (group of) shareholders can be challenged in court by any minority shareholder (s. 192 and 193 MCL).

Also new is the possibility of derivative action. A person such as a minority shareholder or a minority director, acting in good faith, can be granted permission by the court to bring a proceeding to another party, a proceeding that the company refused to bring if, in the view of the court, it is in the interest of the company to do so. Think for example of a company that, controlled by a majority shareholder, refuses to sue a construction contractor for damages, a contractor who also happens to be the affiliate of that majority shareholder.

On a related point, the MCL has created a new legal basis for injunctions issued by courts in connection with a violation of the MCL.

ACTION POINT: Joint ventures or other companies where there are tensions between majority shareholders and active minority shareholders should realize that the playing field has significantly changed. Both parties should examine the new litigation options as a defendant or as a plaintiff.

Small companies and administrative exemptions

Undoubtedly, small companies will appreciate the provision in the MCL that will exempt companies with less than 30 employees and an aggregate annual revenue of less than MMK50,000,000 (approximately US\$36,500) from several administrative requirements. The effects of these exemptions are that a small company need not hold an annual general meeting: unless the Constitution includes otherwise; unless the members pass an ordinary resolution requiring it; or, unless the Registrar of companies, in his or her discretion, determines that the company should hold an annual general meeting.

The same applies to various obligations such as maintaining records of all money received and expended, assets and liabilities, a directors' report, and appointment of an auditor. This is prefaced by the three exceptions listed above. It should be noted that the audit exemption is a controversial provision with a voice of dissent against its enactment in the lower house of Parliament. It is questionable at this juncture whether or not the audit exemption provision will make the final act.

Nonetheless, these exemptions provide welcomed simplicity and will reduce overhead costs, particularly for companies in the early stages of market penetration.

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- Chambers and Partners

VDB Loi and Phoe 'Bushido' Thaw Sinage Ceremony
24 July 2018, VDB Loi Office, Yangon



Public Private Partnership
15 June 2018, The Lake Garden - M



Power Purchase Agreement Workshop for MOEE
9 May 2018, Nay Pyi Taw, Yangon



Union Tax
10 May 2018, Pan P



Myanmar Energy, Infrastructure and Construction Update in Tokyo
20 February 2018, Tokyo



Joint Ventures in Insurance Sector
13 December 2017, VDB Loi Office, Yangon



Workshop for Myanmar Toll Roads
 Gallery Hotel (Sofitel), Nay Pyi Taw



Law 2018
 Pacific Hotel, Yangon



Structuring Condo Projects Under the Condominium Rules
 27 February 2018, VDB Loi Office, Yangon



From MOA to Constitution
 15 December 2017, Shangri La Hotel, Yangon



Upcoming Deals and Opportunities in Myanmar
 13 September 2017, Park Royal Presidential Suite, Nay Pyi Taw



The New Law and Market Access for Petroleum Products in Myanmar
 18 August 2017, Shangri La Hotel, Yangon



ACQUIRING A MEDIA COMPANY IN MYANMAR

Foreign investments in the media sector have not been active in Myanmar this year. One probable reason could be the lack of clarity over foreign ownership in this sector. In this brief we analyze the restriction on foreign ownership according to the laws and requirements from the relevant authorities in Myanmar.

Notification 15 of 2017 ("Notification 15") issued by the Myanmar Investment Commission ("MIC") generally requires approval from the Ministry of Information ("MOI") for foreign investors to engage in media business, but does not mandate the form of incorporation or percentage of foreign ownership. In parallel to Notification 15, the MOI may impose special restrictions over foreign investment to grant the approval to a particular investor.

It should be noted that one of the foremost reasons for the slow growth of foreign investment in the media sector is the lack of inter-departmental synergy and contradictions. For example, DICA does not allow foreign ownership in the areas of non-print media and media production, while the MOI may allow it on certain conditions. In general, DICA will not contradict with the MOI's decision in the media sector. Therefore securing an approval from the MOI for entry of this sector is crucial.

Broadcasting

For broadcasting services, while the State-Owned Enterprise Law of 1989 (the "SOE Law") reserves the right to carry out broadcasting and television services for the government, it allows foreign investment to step in as long as the investor can obtain special permission from the government by establishing a joint venture with the government or under any other conditions; e.g. approval from the MOI. Furthermore, foreign investors can take up to 30% of shareholdings of a company engaging in commercial broadcasting services, according to Sec.48 of the Broadcasting Law of 2015.

Broadcasting businesses are subject to the MOI approval, in particular for:

- Broadcasting direct to home programs;
- Broadcasting DVB-T2 programs; and
- Cable TV



*"VDB really know the minutiae,
but also the way that things
really work in practice."
- Chambers and Partners*

Category	Sub-Category	Notification 15/Other Laws	The MOI
Broadcasting*	Radio Broadcasting	<ul style="list-style-type: none"> Subject to the MOI approval on a case-by-case basis As per the Broadcasting Law of 2015, foreign ownership up to 30% is allowed for commercial broadcasting services 	Foreign ownership up to 30% is allowed
	TV Broadcasting	<ul style="list-style-type: none"> Subject to the MOI approval, in particular for: <ul style="list-style-type: none"> Broadcasting direct to home programs; Broadcasting DVB-T2 programs; and Cable TV As per the Broadcasting Law of 2015, foreign ownership up to 30% is allowed for commercial broadcasting services 	Foreign ownership up to 30% is allowed
Print Media	Magazines and newspaper	Publishing advertisements on periodicals and newspapers: <ul style="list-style-type: none"> In ethnic languages - Prohibited; and In foreign languages - subject to the MOI approval on a case-by-case basis 	No restriction for foreign ownership
Advertising	General	Not prescribed	No restriction for foreign ownership
	Owing billboards	Not prescribed	<ul style="list-style-type: none"> MOI: - No restriction for foreign ownership City Development Committees (CDCs): - Approval from the CDC in the relevant areas will be required. While the CDCs generally do not have restriction over foreign ownership and content of the advertisements, they will not allow advertisements on tobacco, alcohol and drugs
Media Production*		<ul style="list-style-type: none"> Not prescribed As per the Printing and Publishing Law of 2014 and the Television and Video Law of 1996, the MOI approval will be required 	<ul style="list-style-type: none"> No restriction for foreign ownership at the MOI in general For Production and direction of TV commercials and advertisements, a joint venture might be required
Consulting services in media and advertising		Not prescribed	100% foreign ownership is allowed.
Movie Theatres		Not prescribed	Joint venture on a case-by-case basis

* DICA has contradiction with the MOI in this area and does not allow foreign ownership.

Administration (“DICA”) also has a substantial say (mostly in consultation with the MOI) in the process of approving what business activities can be undertaken by a foreign investor. While the laws and the MOI set out a certain threshold for foreign ownership, DICA may have its own policy as well.

Print media

Foreigners are prohibited in owning magazines and newspaper businesses in local ethnic languages including Burmese language, but they can operate magazines and newspaper businesses in a foreign language subject to approval from the MOI and 100% foreign ownership is possible in this circumstance.

Advertising

Notification 15 does not set out any restrictions on foreign ownership for advertising service businesses. Depending on the scope of the activity of the business, other restrictions may however come into play. For example, owning billboards requires approval from the City Development Committees (CDCs). While the CDCs generally do not have restriction over foreign ownership and content of the advertisements, they will not allow certain advertisements.

Production

As per the Television and Video Law of 1996, MOI approval will be required for production of video materials. Notification 15 does not provide any foreign ownership restriction in this area, but in practice the MOI may, depending on the case, reserve the activity for joint ventures between foreign investors and local partners.

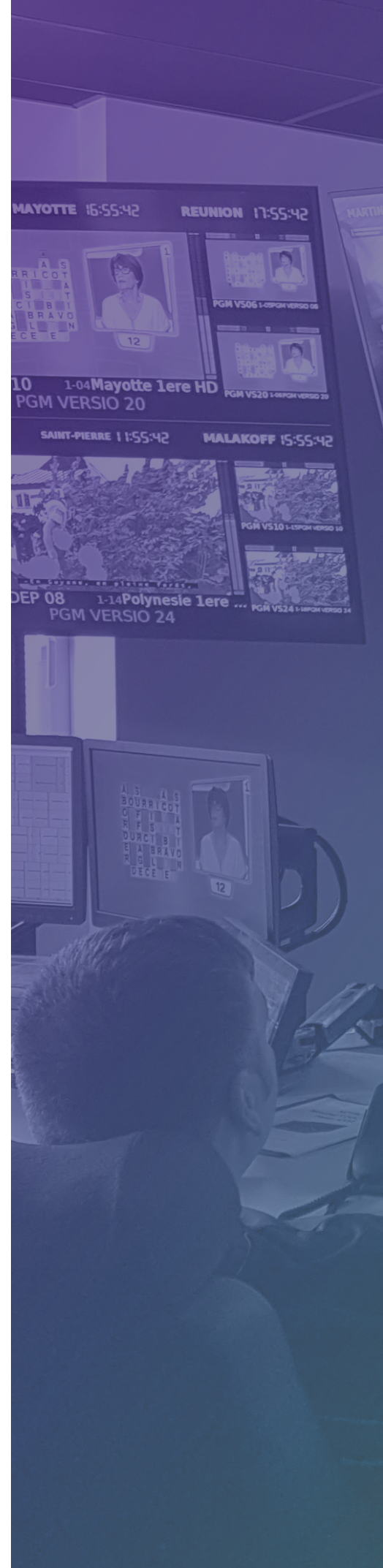
Consulting services in media and advertising


Most consulting services in Myanmar are fully open to foreign investment. This is also generally the case for media, marketing and advertising, although there remain some activities foreign investors may not perform. A case-by-case analysis of the scope of services would be necessary to assess whether special permissions are needed for certain activities.

Movie theaters

Investment in movie theaters is not restricted for foreigners. In fact, a number of joint ventures have been implemented in Myanmar in recent years. However, approval by the MOI is required. The MOI has not published its policy with respect to foreign ownership in movie theaters, but they may take decisions on a case-by-case basis.

The below table summarizes the restrictions currently imposed by the laws and the MOI and also highlights certain inter-departmental contradictions. Note that they are general restrictions and the authorities may impose special restrictions on a case-by-case basis.





***"VDB Loi is widely considered
as a powerhouse in
Myanmar's legal market."***
- Asia Law

EXCERPT FROM NEW RULES FOR PRIVATE SCHOOLS

Encouraging investment, protecting consumers

The Ministry of Education has been receiving advice on the latest draft from legal advisory firm VDB Loi. Senior partner Mr Edwin Vanderbruggen said his team recommended that the ministry beef up consumer protection aspects of the law, such as school fees, disputes between schools and students, and transfers between schools.

It also proposed adding a section regulating how schools can promote themselves through advertising.

"We don't want consumers to get confused with schools throwing around affiliations with institutes or programmes overseas that the regular consumer is not able to gauge what kind of importance that [affiliation] has," Vanderbruggen said.

"It's a moneymaker, it's an eye-catcher when you say, 'Oh, your children are going to be able to study overseas,'" he said. "We don't want this to be misleading, because it's actually not easy for consumers to figure out what kind of accreditations and affiliations with overseas institutes actually matter."

It is unclear when the law will be finalised, let alone go to parliament for examination and approval – a process that can take years. But Vanderbruggen said that because the government had already settled the most contentious aspect of the law – the role of international schools and foreign investors – it made sense to open it up to foreign investment immediately through the April MIC notification.

"The decision has already been taken [so] if you have an investor who is waiting to come in now, who is willing to come in, why not accommodate them?" he said. "I think it's not controversial any more within the government or legislature that international schools should be allowed, and that international schools should be allowed to have international shareholders."

For other aspects of the law, he said, it's about "finding a balance between the rights and interests of consumers, and the operators and owners of the schools".

** Interview with Edwin Vanderbruggen from the article "New Rules from Private Schools" published by Frontier Myanmar.*

THINGS YOU WILL NEED TO DO IF YOU ALREADY HAVE A MYANMAR COMPANY FOLLOWING THE NEW COMPANIES LAW

You need to re-register your company under the new MyCo system

Directorate of Investment and Company Administration (“DICA”) has issued a draft of the Companies Regulations 2018 called Myanmar Companies (Electronic Registry System and Miscellaneous Matters) Regulations 2018 (“Regulation”) with a commencement date of 1 August 2018. The Regulation is a continuation of the Myanmar Companies Law issued in 2017 and is currently in preparation of establishing a new electronic registry system called Myanmar Companies Online (“MyCO”) which will be also launched in August.

The draft regulates the electronic registry system and transactions including filing, lodging of any documents, submissions of applications, accessing of any documents or information maintained by the Registrar under the Law.

The Regulation requires all existing companies and body corporates (branch/representative offices) to proceed with a re-registration of their entities with the MyCo within 6 months from the commencement date. The Registrar may issue prior notice, however if the entity does not re-register within prescribed period, The Registrar may take action to strike its name from the register and publish a notice in the Gazette post which the company will be dissolved. The dissolution does not mean however that the company has been liquidated and liability (if any) of every director and member of the company may continue to be enforced.

If a company fails to re-register, the Registrar prior to its name being struck off, will still be able to restore the entity after a payment of a prescribed fee.

A company that does not re-register within the prescribed period, will not be allowed to carry on business in the Union of Myanmar until it follows all requirements.

The re-registration application of the company will require entities to provide additional information including whether it has an ultimate holding company or will it be a foreign company as per provisions and definitions of Myanmar Companies Law (note that companies with a foreign shareholding or control below 35% will have to be registered as local companies).

Also, with the new Myanmar Companies Law shifting from Memorandum of Association and Articles of Association to Constitution, the company will have to decide at the re-registration stage whether they will adopt the template issued by the DICA or have a customized constitution which will have to be attached to the application.

At the time of re-registration, entities will have to indicate whether they are categorized as “small company”, which means a company, other than a

public company or subsidiary of a public company, which satisfies the following conditions:

- it and its subsidiaries have no more than 30 employees (or such other number as may be prescribed under this Law); and
- it and its subsidiaries had annual revenue in the prior financial year of less than 50,000,000 Kyats in aggregate (or such other amount as may be prescribed under this Law).

The Registrar after successful application will issue new certificate of incorporation with a new registration number. It is important to note that new number and certificate will not affect previous affairs of existing entities, therefore the entity continues its previous activity with same rights and obligations and liabilities.

As a result of the re-registration, all shares issued by the existing company before re-registration will be deemed to be converted into shares of no par value but that conversion will not affect the rights and obligations attached to the shares.

With the requirement of having a resident director, the director of the company will not be allowed to resign or vacate his office and his resignation will be void, unless at least one of the directors on the board is an ordinarily resident. If the company carries on business without having a resident director for over 6 months from the commencement of this Regulation, the member of the company having knowledge in this manner will be liable for the payment of all the debts of the company contracted during the period or, as the case may be, that part of it, and may be sued therefor.

You need to update your AOA into a constitution, and here's why:

- S. 12 (d) says that the MOA and AOA survive, except the objects and except "anything inconsistent with this Law".
- As DICA's previous AOA template refers to table A of the 1914 Myanmar Companies Act, the whole possibility of just keeping the existing MOA/AOA in place is generally not advisable. It will lead to significant uncertainty.
- In addition, you will miss out on some

beneficial measures introduced by the MCL, such as:

- Your existing AOA says nothing about holding meetings through video or teleconference. The MCL allows these now, but it must be mentioned as such in your constitution.
- The MCL has created an exemption for small companies (less than 30 employees and 50 million MMK annual revenue) from the obligation to have an audited balance sheet and P&L, and from an auditor attending the AGM. But, these are subject to the constitution, so if your current AOA mentions anything about auditors, you will not be able to benefit from the exemption.
- The directors must act in the interest of the company, not the holding or a JV partner. Directors may act in the interest of the holding or a shareholder in a JV, but only if this is explicitly provided in the constitution s. 166 MCL.
- Companies will want to eliminate the wide discretion the board has in the current AOA with respect to refusing share transfers. This authority has been significantly limited in the MCL (s. 83 MCL).
- Rotation of directors, always in theory limited to public companies but very often mentioned in the AOA, can be removed.
- To keep your existing company's objects, you need a special resolution. Otherwise they will be phased out and the company may pursue any business allowed by law or permits.

You need to find a resident director (by August 2019)

Companies will require one director who is either permanent or ordinarily resident in Myanmar. That means, for new companies, that this person "is... resident for at least 183 days...commencing from the date of registration of the company". The same rule applies to the authorized officer of a branch (or a representative office).

Corporate groups need to get serious about disclosing conflicts and personal interests

The 1914 Myanmar Companies Act has various rules on conflicts by directors in connection with loans, offices of profit and sales of goods. The provisions of Table A are incorporated into the previous DICA AOA template, and Article 77 of Table A refers to disqualification of directors and includes disqualification of a director who (e) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker; or

(g) accepts a loan from the company; or (h) is concerned or participates in the profits of any contract with the company.

In the MCL, all “material personal interests of a director that relate to the affairs of the company” are now within the scope of application of the MCL, compared to, previously, certain defined transactions (such as loans and sales). The notion of “material personal interest” is not defined. In other jurisdictions being common shareholder or a director in two companies in a commercial competition with each other would easily suffice. The MCL lists a number of practically less relevant situations that are, it seems, considered material personal interests as well, but they need not be disclosed (s. 172). Common Myanmar situations, such as common shareholders, common directors, intragroup sale of assets, loans, etc. are not on the list of exceptions, and must be disclosed.

The constitution can provide otherwise on the participation of conflicted directors on board meetings (the previous DICA template AOA does not), but disclosure is in any case required. S. 163 and 172 MCL. A standing notice is possible (s. 172 c) MCL).

Directors may act in the interest of the holding or a shareholder in a JV, but only if this was explicitly provided in the constitution (s. 166 MCL).

ACTION POINT: Groups with common directors or shareholders in various companies doing business with each other will have to get ready for an almost entirely new framework of rules. You will need to verify if, for example, you need a standing notice on various potential conflicts in your corporate group.

You need to disclose your ultimate holding company

When establishing a new company, you now need to not only identify the shareholder, but also, if the shareholder is a company, the ultimate holding company of that corporate shareholder. You need to go all the way up the chain, until the corporate shareholder is not a subsidiary of any other company (which means, more or less, that no company owns or controls that corporate shareholder for more than 50%). For example, if a fictional ABC Group creates a 100% subsidiary ABC1 which forms a JV with a third party to form ABC2 and ABC2 forms a special purpose company ABC3, ABC3 must let DICA know that its ultimate holding company is ABC Group.

You also need to update the identity of the ultimate holding company in the Annual Return (s. 97 MCL). You will need the ultimate holding company to approve benefits that are granted to members under s. 184 and 185 MCL. Strangely, the ultimate holding is not asked when registering a branch in Myanmar of an overseas corporation (s. 47 MCL).

ACTION POINT: Assess whether you are able to disclose your ultimate holding company to the public, and any potential downsides. Consider restructuring in certain circumstances.

SOME OTHER KEY ISSUES TO NOTE IN THE NEW COMPANIES LAW

Not all of the below issues are new. Some have just been clarified in the MCL. We noted the following:

- Removal from the Register means the legal entity does no longer exist (s. 5 (a) MCL);
- All companies can grant options and security interests (s. 5 (a) (ii) MCL);
- Foreign currency capital denomination is still there at s. 6 (b) (viii)
- Separate legal personality and membership starts from the date of registration of the company s. 9 MCL
- Altering the constitution requires a special resolution
- Changing of company type is possible, but from foreign company to Myanmar company is not mentioned (s. 57). There is a mention of it when registering share transfers.
- Shares may now be issued at different amounts and payment terms s. 70 MCL.
- You cannot have treasury shares. Redeemed shares must be cancelled by the company. Unlike dividend, the redemption price has to come from profits or proceeds of new share issue s. 74 MCL.
- You can have perpetual debentures s. 76 MCL.
- Warrants are phased out, replaced by options s. 79 MCL.
- Specific performance is allowed for taking up debentures s. 78 MCL.
- Transfer of a share is effected by registration in register s. 83 MCL.
- Non-cash dividend such as stock dividend, options, assets is permitted s. 106 MCL.
- A dividend becomes a debt not at declaration but at time of payment arrives s. 106 MCL.
- Restrictions on “financial assistance” applies only, as before, to (subs of) public companies s. 128 MCL. Even then, there are permitted exceptions with a board resolution and a special shareholder approval.
- A company need not carry on any actual business at its registered address s. 141 MCL.
- The statutory meeting is still there for public companies s. 148 MCL.
- Unless the constitution says otherwise, two (2) members is enough for a AGM to be quorate, as before S. 151 MCL
- A proxy for a meeting must be received 48 hours in advance s. 154 (e) MCL.
- Removal of a director no longer requires 75%, but is an ordinary resolution s. 174 MCL.
- Pre-incorporation contracts are now possible. A contract made on behalf of a company before its incorporation can be ratified by the company by passing a director resolution.
- The Annual Return previously in the 1914 Myanmar Companies Act did not explicitly include a cash flow statement as mentioned now in s. 53 (a) MCL (only a balance-sheet and profit and loss Account).

THE CEO'S SPEED READ ON MYANMAR ACQUISITIONS

1. The legal system

As the legal system of Myanmar has its roots in the English common law system, laws in Myanmar are similar to English law.

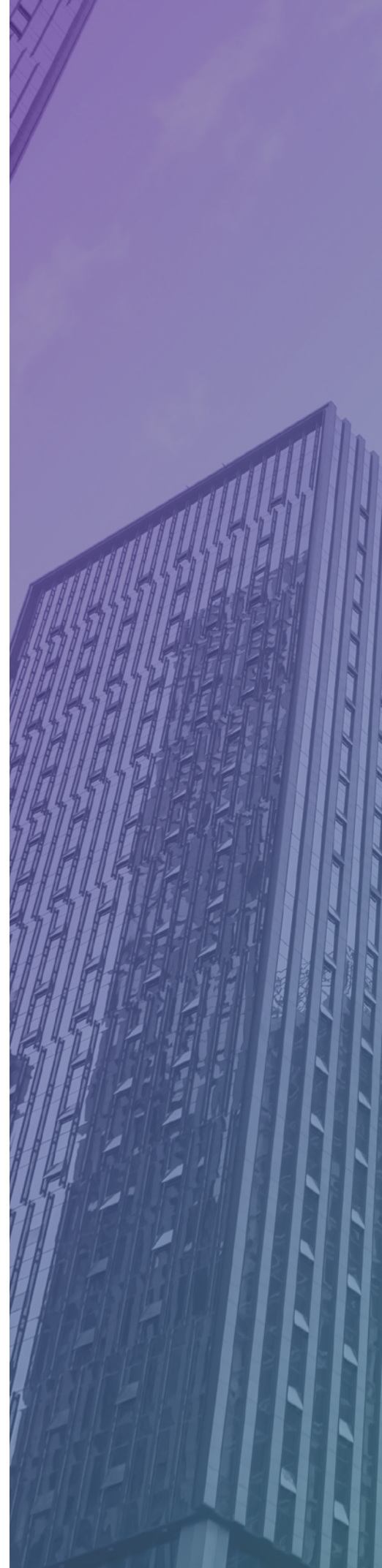
2. Are there restrictions on foreign investment ownership?


- i. The Myanmar Investment Commission (MIC) from time to time issues notifications and regulation covering investment by foreign investors in various businesses sectors in Myanmar. Notification no. 15/2017 of April 10, 2017 by the MIC ("MIC Notification No. 15/2017") contains a list of restricted investment activities. Such activities may be reserved for the Union Government, reserved for Myanmar citizens, permitted to foreigners only in a joint venture with Myanmar citizens, or permitted subject to approval by the competent ministry.
- ii. Activities not mentioned in the notification may, in principle, be conducted without restrictions. There are, however, exceptions to this rule in practice. Other laws may also impose restrictions on investment activities. We also note that Myanmar authorities have imposed joint ventures on a case to case basis where it is not required by the law.
- iii. Investment projects in Myanmar can be implemented in one of three ways: (i) with an MIC Permit, which is required if the project meets certain conditions or exceeds certain thresholds (such as investment amount, environmental impact, etc.) (ii) with an Endorsement (also translated as "Approval Order", kind of a mini-MIC Permit, only available in case the investor needs to use land under a contract exceeding 1 year or in case the project features on the "Promoted Sector List" which is granted tax incentives; or (iii) without either one, just by setting up a company and obtaining operating permits and licenses, if any.
- iv. Companies with foreign shareholding are barred from trading in Myanmar. This includes purchase and import, and subsequent resale of goods.

3. What are the options available for an overseas investor in terms of the purchasing entity?

Subject to appropriate and necessary approvals and consents from the Directorate of Investment and Company Administration ("DICA") and / or the relevant ministry, based on the nature of the business activity and sector of investment, a foreign investor may directly or indirectly invest in a Myanmar entity in any of the following manners:

- i. For investment in a **branch office** – invest directly or purchase shares in the foreign company.
- ii. For investment in a **limited liability company (Ltd.)** – Subscribe to shares or purchase shares of the limited company. A joint venture company is typically a limited liability company with one or more foreign and local shareholders.





“Edwin is very good at dealing with very difficult issues; he can push things through, make things work.”

- Chambers and Partners

CHANGE OF FINANCIAL YEAR


Along with recent economic and political reforms, Union Government of Myanmar has made changes to Myanmar’s financial year (1 April to 31 March). The first new financial year will start from 1 October 2018 to 30 September 2019; i.e. 2018–2019 financial year. The decision was made on 7 September 2017 at Union Government Meeting No. (17/2017). Pursuant to section 210 of the Constitution of the Republic of the Union of Myanmar, the President has sent formal message to Myanmar Parliament (“Pyidaungsu Hluttaw”) on 29 September 2017 for implementation of change of financial year. Accordingly, the new deadline for the filing of annual tax returns under this new financial year will be 30 December 2019.

What will happen to the period from 1 April 2018 to 30 September 2018?

The financial year of 2017–2018 will be closed, as usual, on 30 March 2018. Therefore, annual tax returns for 2017–2018 financial year have to be lodged by 30 June 2018. Instructions regarding the six-month gap between the start of the new financial year and end of the old financial year have not been made available as yet. It is unclear whether it would be necessary to file another set of returns for the six-month period in December 2018 or whether the FY2018–2019 will have a longer financial period – 18 months period from 1 April 2018 to 30 September 2019.

Can companies change their financial year?

Companies cannot choose to have their own financial year and must follow the financial year prescribed by the Pyidaungsu Hluttaw for statutory purposes. Accordingly, companies are required to prepare audited financial statements in accordance with the financial year prescribed by the Pyidaungsu Hluttaw. These audited statements are required to be lodged with the Internal Revenue Department together with its annual tax returns.

- 
- iii. For investment in **public companies** – They are not permitted for foreigners at this time.
 - iv. For investment in a Not for profit **association** – Foreign entities may become members but an association cannot be 100% foreign owned. It requires Myanmar persons and entities to be members jointly.

4. Key corporate governance considerations for a local incorporated entity

- i. All companies are required to be registered with the DICA
- ii. The majority of the companies in Myanmar are private limited companies.
- iii. For a Private Company the following are key
 - Minimum 2 and maximum 50 shareholders;
 - Minimum 2 directors;
- iv. All directors should be individuals;
- v. A general meeting shall be held within eighteen months from the date of its incorporation and thereafter once at least in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting)
- vi. Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

5. Brief overview of structure, documentation and execution

- i. Both share deals and asset deals are more common.
- ii. The contents of a sale and purchase agreement (SPA) in Myanmar are broadly similar to a SPA for acquiring a company under a common law jurisdiction. It is common for:
 - Completion to be subject to conditions precedent (see below)
 - A tax indemnity to be provided by the sellers
 - Warranties to be qualified by disclosures in a disclosure letter
 - Liability to be capped, with a de minimis threshold
 - No general material adverse change condition precedent
 - Data room to be set up for the purpose of buyer's due diligence
 - Reserved matters requiring affirmative vote of selective shareholders or directors
- iii. Non compete provisions are void under Myanmar Laws and may be difficult to enforce in Myanmar if agreed to under the laws of another country;
- iv. For a share deal, at completion, an instrument of transfer is delivered, a share certificate issued and the share transfer takes legal effect when the physical share transfer form (with appropriate stamp duty paid) is filled and received by the DICA. The effective date of update of the register is the date of filing with DICA.

6. What conditions precedent typically need to be satisfied before closing?

- i. Permission of DICA and relevant ministry if post investment / transfer a Myanmar company becomes a foreign company;
- ii. No insolvency event and no force majeure event

- iii. No Material adverse change
- iv. In case of asset / business transfer deals:
 - Payment of severance compensation in accordance with labour laws and consent of employees who are being transferred as part of the deal;
 - Assignment of contracts, liabilities etc.
 - Third party consents if required under third party contracts.

7. What are the options available to the foreign investor in terms of financing the transaction?

- i. **Offshore to offshore:** An offshore bank lends to an offshore parent of a Myanmar project company. The parent can on-lend or can use the proceeds of the loan to capitalize the Myanmar subsidiary. The offshore-to-offshore lending itself does not require Central Bank of Myanmar ("CBM") approval, but bringing the cash into Myanmar needs permission from the MIC (in case it is brought in as capital) or the CBM (as a group internal loan).
- ii. **Offshore to onshore:** The offshore bank lends to a Myanmar company, such as a Myanmar subsidiary. If there is a foreign parent, the parent can be the guarantor. This requires CBM approval.
- iii. **Onshore to onshore:** One of the foreign banks licensed in Myanmar lends to an onshore borrower (which must be a foreign company or a joint venture). This requires no CBM approval. If the borrower has an MIC Permit, the MIC approval is however required.

8. What are the key tax considerations for the foreign investor?

i. *Corporate Income Tax*

The current corporate income tax ("CIT") rate is 25% for Myanmar companies, branches registered under the Myanmar Companies Act 1914 ("MCPA"), and companies operating under permission from the Myanmar Investment Commission ("MIC") (i.e. foreign-owned resident companies with an investment license from the MIC granted under the Foreign Investment Law and Myanmar Investment Law 2016).

ii. *Withholding tax ("WHT")*

With effect from 1 April 2017 the payer has the legal obligation to deduct WHT from payments that are subject to WHT, regardless of whether the income recipient has agreed to the deduction or not. Please note payer has to pay WHT if not deducted. Please refer to below table for summary of WHT rates changes.

Type of Income	Residents	Non-Residents
Interests	0%	15%
Royalties	10%	15%
Goods (Locally purchased goods & not imported goods)	2%	2.5%
Services	2%	2.5%
Lease	2%	2.5%

iii. *Capital gains tax*

- Capital assets include land, buildings and their rooms, vehicles, and work-related capital assets. The expression also includes shares, bonds, securities and similar instruments. Capital gains tax ("CGT") is applicable to both resident and non-resident taxpayers deriving

a profit from the sale, exchange, or transfer of capital assets in Myanmar. CGT is payable by the person deriving the profit. A CGT return must be lodged by any person who sells, exchanges or transfers capital assets, even if there is a loss.

- If the total value of the capital asset; which was sold, exchanged or transferred, does not exceed MMK 10 million, CGT will not be applicable.
- The CGT rate for all taxpayers (with the exception of those deriving a gain from an oil and gas asset or a company holding an oil and gas asset) is 10%, and is imposed in either MMK or a foreign currency.

iv. Share transfer tax

- 10% CGT will be applied on the gain from transfer of shares of a Myanmar company unless exempted under the DTA
- Stamp duty is payable on any written document that relates to a transfer of shares of a Myanmar-incorporated company, such as a sale and purchase agreement, transfer document for shares and mortgage for shares.
- The document must be stamped either before the signing or within 30 days after signing the document.

v. Property transfer tax

- The fundamental legislation for property tax ("PT") is the City of Rangoon Municipal Act 1922 ("CRMA"), City of Yangon Development Law 1990 ("CYDL") and the Yangon City Development Law 2013 ("YCDL"). Accordingly, the Yangon City Development Committee ("YCDC") was created to administer these laws and collect PT. PT only applies to certain land, buildings or land and buildings ("premises") located within the territory of Yangon. In other areas of Myanmar, for instance Mandalay or Nay Pyi Taw, PT is administered in accordance with relevant local regulations.
- Section 2(4) of YCDL regulates that PT includes four categories of taxes: miscellaneous tax, lighting tax, water tax and sanitation tax. The rate for each category is as below:
 - Miscellaneous tax: maximum of 20% of annual value of premises
 - Lighting tax: maximum of 5% of annual value of premises
 - Water tax: maximum of 12% of annual value of premises
 - Sanitation tax: maximum of 15% of annual value of premises
- PT will be levied on the annual value of the land or premises. Different rate and calculation will be applied depending on the use of the premises. PT is paid once per year. The annual value of the property will be determined by YCDC or local authorities where the premises are located.

vi. Dividend income

Under the current Myanmar income tax law, there is no tax applied on dividend.

9. Is arbitration a common option for dispute resolution?

Yes. Although Myanmar courts as a rule would respect international law as the law governing the Agreement, and the choice of foreign arbitration, however, given the lack of experience of Myanmar courts in international commercial matters, it cannot be excluded that the courts would have difficulties regarding enforcement of a judgment or an award in Myanmar.

10. Is there a requirement that the agreement be executed in the local language?

No, there are no language requirements.

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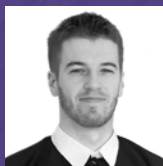


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