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AUTHORS



Edith Ruan
Counsel

Qualified both in China and in New York, Edith is a counsel based in our Yangon Office where she advises clients for commercial transactions across infrastructure, banking and financing as well as telecommunications sectors. She also represents clients in project negotiations with the Myanmar Government.



Yu Lie Yup
Legal Associate

Yu Lie is a legal associate based in our Yangon Office and she assists Chinese clients in financing, transactional and regulatory matters. Yu Lie a qualified lawyer in Malaysia while she holds an LLM from the University of Nottingham, UK. She speaks English, Bahasa Malaysian, Mandarin and Cantonese.

IS IT POSSIBLE TO SUE A DISSOLVED COMPANY?

When a company has dissolved, it essentially means that the company has ceased to exist, and thus cannot sue or be sued. The question then becomes, how can a party pursue a claim against a dissolved company?

To determine whether the dissolved company can be sued, we first have to ascertain the reason it was dissolved. The Myanmar Companies Law 2017 (“MCL”) allows a company to be dissolved: (i) through liquidation, either by court order or voluntarily; or (ii) by the Directorate of Investment and Company Administration (“DICA”) striking it from the register for failure to file annual returns and accounts on time, failure to re-register the company within the prescribed time limit, or because the sole director and shareholder died and no one has taken over the company’s day-to-day management. The difference between the aforesaid causes is the former is a dissolution via a formal court proceeding, and the latter is a dissolution through an administrative process carried out by DICA.

Once the reason for dissolution is determined, the next step is to restore the dissolved company. This usually involves a formal court process, which varies under the MCL, depending on the reason the company was dissolved in the first place.

Highlights of this note

- ▶ How can a party pursue a claim against a dissolved company?
- ▶ How to restore a dissolved company under the Myanmar Companies Law 2017?
- ▶ What are the practical considerations in pursuing a claim against a dissolved company?

However, the provisions catering to the restoration of a company under the MCL are not straightforward and clear.

For companies that have been struck from the registry by the DICA, Part VI of MCL states that the company itself, or any member or creditor that feels aggrieved may apply to the court to restore the company to the register. If the court is satisfied that at the time it was struck off the company was carrying on business operations, it may order that the company be added back to the registry and all personnel be restored to their same positions, as if the company had never been struck off.

In contrast, section 406 of Part V Winding-up of the MCL states when a company is dissolved there is a time limit of two years from the date of dissolution during which the court may at any time within two years of the date of dissolution, upon an application by the company's liquidator or any other interested person, issue an order, with such terms as the court sees fit, declaring the dissolution void. Thereupon, such proceedings may take place as might have taken place if the company had not been dissolved.

Reading both MCL Parts together, the board wording under section 406 of MCL seems to suggest that the two-year time limit for the interested party/aggrieved party to restore the dissolved company is applicable to the situation where the company is struck off by DICA.

There is uncertainty regarding the court's approach to the company after restoration because of a lack of precedent. Therefore, following restoration of the company, there are a few practical considerations, especially in the case of liquidation.

a. Can the aggrieved party pursue a claim against the company's directors and shareholders after its restoration, i.e. piercing the corporate veil?

The MCL allows the court to lift the corporate veil in certain situations, for instance, to arrest a shareholder that is about to abscond with, or remove or conceal their property for the purpose of evading payment, or to prosecute a delinquent director. However, the court is only allowed to lift the corporate veil at a specific timing i.e. during the winding up process. This is crucial, especially in the scenario where the restored company has no assets for the aggrieved party to pursue.

It is unclear from the wording of the MCL whether the court is allowed to pierce the corporate veil of a newly restored company. Nevertheless, the MCL clearly states that the court will restore the company back to its former position as if the dissolution had never happened, which seems to suggest that the "piercing the corporate veil" provisions offered under the MCL may be applied to the restored company.

b. Is there any time limitation imposed by the court on initiating a claim after restoration?

As the court may order the terms that it sees fit, there is nothing that precludes it from imposing a limitation period for the aggrieved party to pursue its claim against a restored company.

After the company is restored to its formal position, one's cause of action is subjected to various limitations, for instance, the unregistered contractual claim is subjected to three years limitation period. Therefore, it is prudent to observe the applicable limitation period before initiating the claim.

c. How can notice be served to the newly restored company?

Assuming that the newly restored company is no longer located at its former address and service to the newly restored company or its directors or shareholders has proved impossible, the aggrieved party may apply to the court to request that service be made via public notice, i.e. through the newspaper.



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CONTACT

YANGON

Level 10, Unit 01-05, Junction City Office Tower,
Corner of Bogyoke Aung San Road and 27th Street,
Pabedan Township
T +951 9253752~756
F: +951 9253758

NAY PYI TAW

Nilar #2, Business Center, Park Royal Hotel Nay Pyi Taw,
Jade Villa no. 13/14 Hotel Zone,
Dekhina Thiri Township
T: +95 678 106089
F: +95 678 108 092