

Updates on Myanmar
Companies Law (signed
by President on 6
December 2017)

New Myanmar Companies Law

PwC Myanmar | Corporate Support Services

The President of the Union of Myanmar signed the Myanmar Companies Law (“the new Law”) on 6 December 2017. The details of implementation will be further announced under new notifications, and expected to be in force in mid-2018.

In this newsletter, we have outlined certain key developments in this new Law.

Definition of foreign company

Foreign company is now defined as “a company incorporated in the Union in which an overseas corporation or other foreign person (or combination of them) owns or controls, directly or indirectly, an ownership interest of more than thirty-five per cent” (s.1(c)(xiv)). This new definition allows foreign investors to take minority stake in companies incorporate in Myanmar for accessing to business activities that was previously restricted to Myanmar nationals only.

Simplified incorporation process

Company to be registered under the new Law will require only minimum one shareholder and one director (s.4(a)). A share will not have a nominal or par value (s.60(b)).

The Law also mentioned the Registrar (which inferred as the Directorate of Investment and Company Administration (“DICA”) and any successor agency (s.419(a))) will establish system and process for the electronic authentication, submission, filing, storage and maintenance of records (s.421(b)). Signature will need not be in original ink on paper, and may consists of entry of the signer’s name in an electronic form (s.1(c)(xxxviii)). We believe the upgrading of incorporation and filing process from manual to electronic mode is on the way.

Ordinarily resident

The new Law require a company should have at least one director who must be an ordinarily resident (for public company, at least three directors, and one of whom must be a Myanmar citizen who is an ordinarily resident) (s.4(a)).

Ordinarily resident is a person who is a permanent resident or is resident for at least 183 days in each 12 month period (s.1(c)(xix)).

Such requirement also applies to authorised officer of an overseas corporation (e.g. chief representative of a foreign branch or representative office) (s.1(c)(iii))

Existing company will have until the end of transition period to appoint a director who is ordinarily resident (s.469(b)). Overseas corporation will have the same transition period to appoint an authorised officer (s.469(c)).

Transition period is defined as “12 month from the date of commencement of this Law” (s.1(c)(xliii)).

Overseas corporation

The new Law emphasises that an overseas corporation should register in Myanmar if it intends to carry on business in the country (s.43(a)), unless the business is an isolated transaction that is completed within a period of 30 days (s.43(b)(viii)).

New concepts of “small company”, “solvency test” and “company secretary”

The new Law introduces the concept of “small company”, which is defined as a company and its subsidiaries have no more than 30 employees, and annual revenue in the prior financial year of less than MMK 50,000,000 in aggregate. This does not apply to a public company or subsidiary of a public company (s.1(c)(xxxix)).

A small company is exempted from holding an annual general meeting (s.146(e)), preparing annual financial statements and having the financial statements be audited (s.257(c)). Nonetheless, a small company is still required to keep written financial record (e.g. sum of money received and expended, sales and purchase of goods, and assets and liabilities, etc.) to enable preparation of financial statements (s.258).

A new concept of “solvency test” is also introduced, which is applied when a company redeems redeemable preference share (s.74(c)(iii)), makes payment of dividend (s.107(a)(i)), reduces share capital (s.115(b)(i)), buy-backs shares (s.120(a)(i)), and provides financial assistance to acquire own shares (s.130(a)(i)(E)). A company is considered meet the solvency test requirement when it is able to pay its debt as they become due, and the company’s assets exceed its liabilities (s.1(c)(xl)).

The position of “company secretary” is also introduced (s.4(b)). A natural person of sound mind who is at least 18 years old may be appointed as company secretary by a resolution of directors (s.179). A company secretary is empowered to execute a document together with a director (s.29(c)(iii)).

Public company

A public company is a company limited by shares with 50 or more shareholders (s.2(a)(ii)). A private company may apply for a change to become a public company (s.57(b)(i)) and vice versa (s.57(b)(ii)). Public company is required to have its registers made available for inspection by public (s.99). A highest penalty of MMK 10,000,000 will apply if a public company does not conform to requirement about prospectus (s.204, s.208, s.209, s.224).

Consolidated financial statements

Under the new Law, a holding company is required to prepare consolidated financial statements, and have the consolidated financial statements be audited (s.263).

Penalty and fine for non-compliance

Throughout the 476 sections of the new Law, the word “fine” was mentioned for more than 70 times. The corresponding monetary penalties range from MMK 50,000 (for non-publication of name (s.144(a))) to MMK 10,000,000 (for not complying with directors’ duties (s.190(a))). This is a vast improvement to the Myanmar Companies Act (“previous Law”) as it provides more clarity and details about consequences of different types of non-compliance. Below is a summary of the changes to key compliance matters.

Key Compliance matters	Previous Law	New Law
Notify Registrar for issuance of share	Within 1 month	Within 21 days (s.71)
Issue share certificates	Within 3 months	Within 28 days (s.89)
Notify Registrar for appointing of directors of company or chief representatives of branch/ representative office	Within 14 days	Directors – within 28 days (s.189) Chief Representatives – within 7 days (s.51)
Notify Registrar for change of address	Within 28 days	Within 28 days (s.51)(s.141)
Hold annual general meeting (“AGM”) for company	Within 18 months from date of incorporation, and thereafter once at least in every calendar year and not more than 15 months.	Within 18 months from date of incorporation, and thereafter once at least in every calendar year and not more than 15 months. (s.146)
Notify Registrar for holding of AGM, filing of annual returns and audited financial statement	Within 21 days of AGM	Written minutes ready for inspection within 21 days. (s.157) Annual returns and audited financial statements to be filed within 2 months of incorporation, and thereafter once at least in every year (but no later than 1 month after the anniversary of its incorporation) (s.97)
Filing of audited financial statements for branch/ representative office	Annually	Within 28 days of the end of its financial years (s.53)



Contacts

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