



PREPARE FOR THE NEW MYANMAR COMPANIES LAW

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GET READY FOR THE NEW MYANMAR COMPANIES LAW

It has been confirmed; the Myanmar Companies Law 2017 will be effective as of 1 August 2018. The new law affects all businesses operating in Myanmar, but has a particular impact on:

- a) Joint ventures, especially where previous financings have not been fully documented
- b) Foreign investors looking at making investments in land, trading businesses, Myanmar banks and insurance companies
- c) Myanmar companies looking for a foreign partner
- d) Overseas companies doing business in Myanmar
- e) Companies where shareholders are making in-kind contributions
- f) Companies looking to free up, redeploy and raise capital
- g) Companies with no directors present in Myanmar
- h) Companies with incomplete internal corporate records
- i) Two shareholder companies

1 IMPORTANT DEADLINES

Key actions to be taken in order to comply with the MCL:

1.1 By 1 August 2018

Ensure that your corporate records are up to date (registers, share certificates, conflict notices and records of meetings)

1.2 By 31 January 2019

Re-register your business on DICA's new electronic registry and adopt a new constitution.

1.3 By 31 July 2019

At least one director of an existing Myanmar incorporated company needs to be resident in Myanmar. In the case of an overseas corporation registered in Myanmar, either a director needs to be resident or an authorised officer who is resident in Myanmar should be appointed.

2 HOW WE CAN HELP

Members of SCM Legal drafted the new Myanmar Companies Law. With this knowledge and our international corporate experience, we can unlock the benefits of the new law for investors in Myanmar.

If you sign up to a fixed-fee package offered by our Regulatory and Compliance team (outlined below) we will attend to the mandatory re-registration of your company with DICA at no additional fee.

We can also provide the full range of specialised legal services to prepare you for the new Companies Law, such as support in establishing and training your in-house teams, providing strategic governance advice to your Board, documenting and implementing company restructures and reorganisations, preparation of bespoke constitutions and joint venture arrangements, advising on new share and security issues, MIC and DICA troubleshooting and providing full outsourced General Counsel services.

3 OUTLINE OF MCL CHANGES

3.1 Directors

The MCL requires all private companies to have at least one director who is ordinarily resident in Myanmar (public companies require three). For existing companies this requirement will become effective on 31 July 2019. Overseas corporations registered in Myanmar, often referred to as a branch, require either a resident director or an authorised officer to be ordinarily resident in Myanmar. 'Ordinarily resident' means spending at least 183 days a year in Myanmar.

3.2 Company re-registration

By 31 January 2019, every corporate must re-register at DICA. The purpose of the re-registration is to migrate all the company details to the new electronic registry system. Failing to do so can lead to the company being struck off the corporate register and ultimately being dissolved. Details to be provided for the re-registration include details of directors and shareholders and whether the new model Constitution will be used.

3.3 New constitution

The MCL does away with the Memorandum and Articles of Association of the company and replaces it with a single Constitution. If you do nothing, the current Memorandum and Articles of Association is considered to be the Constitution and the business objectives within them will remain until 1 August 2019, after which they will fall away. While there is no obligation to change the Constitution, upon re-registration the company needs to confirm whether it will adopt the new model form Constitution or use a bespoke one.

To take advantage of the benefits of the MCL we recommend adopting a new Constitution, giving the company more flexibility in the manner it conducts business. Note that altering the constitution requires the approval of at least 75% of the shareholders.

3.4 Corporate documents

Under the MCL all companies are required to keep their own detailed corporate registers and records; relying on copies of documents submitted to DICA is not sufficient. These include a members' register, directors' register, register of mortgages and charges, register of option holders, register of directors' interests and records of meetings.

The MCL provides for fines and penalties, which can be levied against directors, if these records aren't kept. Companies should therefore ensure that all corporate records are up to date by 1 August .

3.5 Local ownership changes

Foreign investors will be able to invest in and own up to 35% of a Myanmar company before it is considered a 'foreign company'. This creates opportunities for foreign investors to have a stake in businesses, which were previously off limits due to foreign ownership restrictions. These include Myanmar companies which own land, are involved in retail and wholesale trading and distribution and financial services companies such as banks and insurance firms. It also has the benefit of making capital more easily available to Myanmar businesses looking to grow their business in these sectors.

3.6 Joint ventures

A common problem with joint ventures in Myanmar occurs where the foreign joint venture partner has been funding the operations of the business without properly documenting how the capital has been contributed. There is now a good opportunity to rectify this. New instruments can now be issued under the MCL without causing a dilution of the local party's interests, while providing a proper basis for the remittance of dividends and capital to the foreign shareholder, and proper accounting for the company.

3.7 Capital structure

The MCL expressly allows companies to issue more than one class of share. With the new online registry capable of registering different types of shares or other securities, including options and convertible shares, investors have additional tools to raise finance.

Companies would typically use the above to:

- issue shares with a fixed dividend yield with priority over the remaining shareholders
- issue shares with either limited or enhanced voting rights
- issue callable shares to manage company liabilities
- provide a convertible loan under which the debt can be converted into shares in the company

This may be of particular interest to companies operating as a joint venture who need tools to increase their funding in circumstances where investors need to be treated differently to manage their risks and provide new investment.

The par value concept is also being removed, rendering share premium accounts no longer necessary and there is no longer a requirement to prescribe an authorised share capital. The MCL has also included criteria to satisfy when issuing shares for in-kind capital contributions.

3.8 Company structures

Using a group structure for your business can enhance the ability to attract finance and manage risk. Subsidiaries can be used to quarantine assets, liabilities and risks or for regulatory reasons. It is also considerably easier for investors to exit investments by selling-off a company rather than transferring individual assets from a conglomerate.

The MCL recognises group structures and includes provisions to facilitate the managing of corporate groups. This includes allowing single shareholder companies and permitting directors to act in the interests of appointing shareholders rather than the company itself.

3.9 Capital reductions and share buy-backs

Asset rich companies can now free-up capital by carrying out a capital reduction or buying back shares to return funds to shareholders, who may then redeploy the capital to use in other investments. Companies can also use these procedures to change their capital mix and enhance future returns on equity. These procedures have significant potential to unlock value and facilitate new acquisition structures.

4 SCM CORPORATE AND REGULATORY SERVICES

To help you prepare for the start of the new Myanmar Companies Law, and the increased regulatory surveillance that will follow, we are offering these services through our specialised Regulatory Compliance team at highly competitive, fixed-fee rates:

Company incorporations and overseas company registrations
MIC permit and endorsement applications
Myanmar to Foreign company conversions
Annual corporate secretarial and compliance service

Annual MIC compliance service
Resident directors, authorised officer and registered office service
Adoption of a new company constitution
Change to a single shareholder company
Compliance audits of company books and filings
Tax registrations and compliance

Contact us to ensure you are prepared for the new law and all the opportunities that will follow.

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