



DICA ISSUES MYANMAR COMPANIES REGULATIONS IMPLEMENTING THE MYANMAR COMPANIES LAW AND REQUIRING COMPANIES TO RE-REGISTER ONLINE

Introduction to 2018 Myanmar Companies Regulations

On 23 July 2018, Myanmar's Ministry of Planning and Finance issued Notification No. 66/ 2018 in accordance with Section 462 (1) (a) of the Myanmar Companies Law 2017 ("MCL"). Notification No. 66/ 2018 ("**Myanmar Companies Regulations**" or "**Regulations**") establishes an online companies' registry ("**Myanmar Companies Online**" or "**MyCo**") and sets out provisions in respect to the operation of the MCL, which comes into effect on 1 August 2018 and replaces the Myanmar Companies Act (1914) ("**MCA**"). As part of the legislative and administrative transition from the MCA to the MCL, all companies incorporated in Myanmar, are required to "re-register" with the Directorate of Investment and Company Administration ("**DICA**"). Among other benefits, the MCL provides for expanded corporate powers, improved shareholder protections, and more sophisticated capital structures. The introduction and implementation of the MCL is the most significant legislative development in Myanmar since reform began in 2011.

Myanmar Companies Online - MyCo

The Myanmar Companies Regulations provide for the establishment of an online companies' registry 'Myanmar Companies Online'. To date, Myanmar has had no electronic filing system, all company filings were completed by hand and limited company information was publically available. The 'Company Search' facility on the DICA's website provided very basic company information only. It was not possible to obtain up to date information on the identity of a Myanmar company's shareholders and/or details of its capital structure.

From now on, companies will be able to make electronic filings via the Myanmar Companies Online system and pay filing fees online. A company is required to keep copies of any documents filed electronically at its registered address. The Registry has the power to issue certified documents or an extract of a document, if required. Companies are required to provide the Registry with an email address for the service of notices and other communications. The Regulations also provide for non-electronic filings once operational 'MyCo' filings will be available to the public.

Re-registration under the Myanmar Companies Law

All companies incorporated in Myanmar are required to re-register with the DICA via 'MyCo' within a six month Re-registration Period (i.e. prior to the 31 January 2019, assuming the MCL become effective on 1 August 2018 as scheduled). A company may be refused re-registration if it fails to comply with the Registry's instructions in respect to the completion and filing of re-registration forms, requests for additional documentation or failure to pay the Registry's fees. Companies failing to re-register within the Re-registration Period, will be struck from the register and dissolved following the publication of a 'strike-off' notice in the Myanmar Gazette, published by Myanmar's Ministry of Information. The Registry has the power to 'restore' a struck-off company, if the company can provide sufficient reason for its failure to re-register. A struck-off company cannot carry on its business until restored.

Application for re-registration

An application to re-register an existing company must be made to the Registrar in the prescribed form and must state:

1. the full name, date of birth, gender, nationality and address of every director and secretary of the company;
2. the address of the registered office of the company;
3. the address of the principal place of business of the company (if different to the registered office);
4. the full name and address of every member of the company, and the number and class of shares issued to each member;
5. whether the company has an ultimate holding company;
6. whether the company will, on re-registration, be a foreign company (i.e. a company in which foreign person(s) or entities hold, or control, more than 35% of the company's total issued share capital); and
7. any other information requested by the Registry in the re-registration form.

On 10 July 2018, DICA issued Notification No. 60 /2018, the 'Prescribed Model Constitution under the Myanmar Companies Law 2017' ("**Constitution**"). Companies incorporating under the MCL can adopt the Constitution in its prescribed form or containing amendments approved by the DICA. The Constitution is a single document and replaces the simple form Memorandum and Articles of Association adopted by companies incorporated under the MCA. MCA-incorporated companies can adopt the new MCL Constitution on re-registration. A re-registration application must be accompanied by a copy of the company's new Constitution or Memorandum or Articles of Association (if the company opts to continue with its existing Memorandum or Articles of Association). The company is required to state whether it has adopted the model Constitution as prescribed or an amended version for DICA's approval. The Memorandum and Articles of Association of a company incorporated under MCA contained details of the company's share capital. The Myanmar Companies Regulations deletes this provision. A company's share capital information will set out in the relevant DICA filing form only.

On receiving a completed application form, DICA will: -

1. enter the details of the company in the Myanmar Companies Online system on the electronic registry system;
2. issue the company with a new certificate of registration; and
3. issue the company with a new registration number.

A new certificate of registration can be taken as conclusive evidence that a company has complied with all the requirements in respect of registration. No permit to trade will be issued under the MCL.

Legal status and conversion of shares

Chapter 3, Paragraph 6 of the Myanmar Companies Regulations confirms the legal status of companies will not be affected by the re-registration process. Re-registration does not:

1. create a new legal entity;
2. affect a company's property, rights, or obligations;
3. affect any proceedings by or against the company (or its members); or
4. affect the liability of the company for any amounts payable by way of penalty or default in arising under Myanmar law.

On re-registration, all shares issued by the company prior to re-registration are deemed to be converted into shares of **no par value**. Conversion does not affect the rights and obligations attached to the shares, and in particular does not affect:

1. the entitlements of the holder of the shares in respect of distributions, voting, the redemption of any redeemable shares, or the distribution of the company's assets on liquidation; and
2. any unpaid liability of a shareholder in respect to a share.

The liability of a shareholder for calls in respect of amounts unpaid on shares issued before the commencement of the MCL (whether in respect to the nominal value of the shares or a premium) is not affected by the share ceasing to have a nominal value. Pursuant to Paragraph 9 (d), on the commencement date of the MCL, the balance in the company's share premium account and capital redemption reserve shall become part of the company's share capital.

Notwithstanding sub-paragraph (d), a company may, on or after the commencement of the MCL, apply any amount in its share premium account immediately before the MCL's commencement:-

1. provide for the premium payable on redemption of debentures or redeemable on preference shares issued before that day;
2. write off the preliminary expenses of the company incurred before that day; or
3. write off any expenses incurred, or commissions or brokerages paid or discounts allowed, on or before that day, for any duty, fee or tax payable on or in connection with any issue of shares of the company;
4. pay up, pursuant to an agreement made before that day, shares which were unissued before that day and which are to be issued on or after that day to members of the company as fully paid bonus shares;
5. pay up in whole or in part the balance unpaid on shares issued before that day to members of the company; or pay dividends declared before that day, if such dividends are satisfied by the issue of shares to members of the company.

Exemption from filing annual return during re-registration period

Pursuant to Chapter 3, Paragraph 8 (a) of the Myanmar Companies Regulations, a company required to file an annual return under Section 97 or section 53(a) (l)¹ of the MCL during the re-registration period, is exempt from having to making a filing.

Ordinarily resident Director

A company incorporated under the MCA was required to have a minimum of 2 directors. The MCA did not require directors to be Myanmar residents. A company registered under the MCL can have a sole director. However, pursuant to Section 469 of the MCL, at least one director must be ordinarily resident (“**Resident Director**”) in Myanmar (i.e. present in Myanmar for a minimum of 183 days in a relevant 12 month period). The resident director does not need to be a Myanmar citizen. Companies should notify the DICA of changes in their directors when re-registering. A company director cannot resign or vacate his position if it means the company is left without Resident Director. If a company carries on business without a Resident Director, the members of the company, and/or any person with knowledge that the company is carrying on business without a Resident Director, shall be liable for the payment of the company’s debts arising during the period

¹ A company formed within 2 months of the MCL commits into effect or on overseas corporation conducting business in Myanmar.

Abolition of 5 year registration period

Although it is not stated in the Regulations, U Aung Naing Oo, secretary of the Myanmar Investment Commission has announced that re-registered companies will be permanently registered. The previous 5 year registration period will no longer apply.²

Conclusion

The MCL and Regulations (together with Notification No. 60/2018 which sets out the MCL Model Constitution) represent significant legislative achievements for the Myanmar Government and represent the beginning of a new era in Myanmar’s corporate law. They bring Myanmar law into line with recognizable international standards and facilitate local and foreign investment in existing and new businesses.

² Source: The Myanmar Times, 26 July 2018; www.mmtimes.com/news/draft-regulations-companies-law-released-go-effect-august.html

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