



## Myanmar Law Updates

March 2020

### NEW CORPORATE GOVERNANCE NOTIFICATION ENDORSED BY THE ADVISORY COMMITTEE FOR CORPORATE GOVERNANCE REFORM

On 5 February 2020, the Advisory Committee for Corporate Governance Reform (**the advisory committee**) in Myanmar announced<sup>1</sup> its endorsement of a new corporate governance notification (**the notification**). Following legislative approval, it is anticipated that the notification will be published in April 2020 and will become effective in October 2020.

The notification is one of a number of efforts to improve good corporate governance in Myanmar, which are outlined below, and illustrates the impact that investor demand and international support are having on corporate governance improvements.

#### I. Corporate Governance in Myanmar

Over the past few years, Myanmar has undertaken a series of initiatives aimed at developing good corporate governance.

2014 saw the first international cooperation with the Government of Myanmar on investment climate reform with the publication of the Organisation for Economic Cooperation (**OECD**) Investment Policy Review: Myanmar<sup>2</sup>, undertaken in partnership with ASEAN, which noted the lack of a policy framework on corporate governance and recommended that steps should be taken to introduce the basic principles of corporate governance into Myanmar's corporate legal framework.

Subsequently, and in addition to the formation of the advisory committee in January 2019, there have been a number of corporate governance initiatives and developments in Myanmar, including:

- The enactment of the Myanmar Companies Law<sup>3</sup> on 6 December 2017 (coming into effect on 1 August 2018), which enhanced the Companies Act 1914 by including matters relating to corporate governance, including introducing protections for the rights of shareholders and prescribing details on disclosing information about the company;<sup>4</sup>
- The publication of a Company Directors Guide<sup>5</sup> in 2017 by the Directorate of Investment and Company Administration (**DICA**);
- The formation of the Myanmar Institute of Directors<sup>6</sup> in March 2018, aimed at promoting corporate governance, which held Myanmar's first licensed director course in April 2019, producing 36 licensed directors;

3 [https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/final\\_mcl\\_english\\_version\\_6\\_dec\\_president\\_signed\\_version\\_cl.pdf](https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/final_mcl_english_version_6_dec_president_signed_version_cl.pdf)

4 For rights of shareholders, see: sections 17, 25(d), 60, 61, 99, 116, 121, 146, 148, 150-154, 157, 173, 186, 188, 260, 261, and 345. For details on disclosing information about the company, see: sections 90-95, 97, 99, 189 and 241.

5 [https://www.dica.gov.mm/sites/dica.gov.mm/files/news-files/company\\_director\\_guide\\_eng.pdf](https://www.dica.gov.mm/sites/dica.gov.mm/files/news-files/company_director_guide_eng.pdf)

6 <http://myanmariod.com>

1 <https://secm.gov.mm/wp-content/uploads/2020/02/Endorsement-of-New-CG-M.pdf>

2 <https://www.responsiblebusiness.no/files/2014/03/Myanmar-Investment-Policy-Review.pdf>

- The formation of the Corporate Governance Reform Project by OECD in January 2018 and the subsequent signing of a Memorandum of Understanding (**MoU**) between DICA, Securities and Exchange Commission Myanmar (**SECM**) and OECD for cooperative activities for the project; and
- The anticipated publication of Myanmar's Corporate Governance Code in 2020.<sup>7</sup>

According to the Myanmar Corporate Governance Scorecard 2018<sup>8</sup>, the mean score of 24 Myanmar companies whose governance practices had been assessed was 30 percent, which compares to the ASEAN average of 69 percent in 2015. Notably however, some Myanmar companies were performing above the average, with the highest at 59 percent and listed companies scoring 43 percent on average.

The scorecard pointed to two particular areas for improvement as regards corporate governance in Myanmar, namely responsibilities of the boards and disclosure and transparency, and ultimately recommended a number of legislative and regulatory developments, private sector/company developments and public sector/state-owned company developments.

## II. The Corporate Governance Notification

The notification is set to be applied to listed companies and public companies with more than 100 shareholders and covers key areas, including:

- Internal control systems, with DICA to monitor such of listed companies;
- Audit committees, to oversee the effectiveness of the international control system and ensure it functions properly, chaired by an independent director;
- Independent directors, of which listed companies will be required to have at least one; and
- Disclosure.

The notification has been drafted based on the Securities Exchange Law and Myanmar Companies Law. Some items will be effective from October 2020, while others will be reported to DICA and will come into effect in 2021.

## III. Anticipated Consequences of the New Corporate Governance Notification

According to U Aung Naing Oo, acting chair of the Advisory Committee and permanent secretary of the Ministry of Investment and Foreign Economic Relations, the notification will:

1. Improve investor confidence in and contribute to the development of Myanmar capital markets;
2. Increase economic efficiencies; and
3. Help listed companies and public companies to regulate their management to ensure compliance with the best governance practices.

Currently, the lack of corporate governance awareness restricts the ability of investors to analyse the potential of companies and fuels apprehension. Therefore the notification, and indeed other corporate governance developments such as the Corporate Governance Code (mentioned above), will be welcome developments, particularly in regard to business expansion and closing the gap with other ASEAN markets.

<sup>7</sup> See: <https://www.mmtimes.com/news/corporate-governance-code-be-ready-next-year-minister.html>

<sup>8</sup> [https://www.ifc.org/wps/wcm/connect/26cf42a0-1bcd-4a15-8345-b1bf614c9549/Myanmar\\_Corporate\\_Governance\\_Scorecard\\_English.pdf?MOD=AJPERES&CVID=mLkTA.P](https://www.ifc.org/wps/wcm/connect/26cf42a0-1bcd-4a15-8345-b1bf614c9549/Myanmar_Corporate_Governance_Scorecard_English.pdf?MOD=AJPERES&CVID=mLkTA.P)

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