



MANDATORY CORPORATE GOVERNANCE AND RELATED PARTY TRANSACTION REQUIREMENTS FOR MYANMAR PUBLIC COMPANIES

On 3 December 2020, the Securities and Exchange Commission of Myanmar (the **SECM**) issued Notification on Requirements for Effective Corporate Governance¹ (**Notification 2/2020**) and Instruction on Material Related Party Transactions for Listed Companies and Public Companies with More than One Hundred Shareholders² (**Instruction 3/2020**), which came into effect on 1 January 2021, with the provisions contained therein being effective from 1 April 2021. Notification 2/2020 sets out the requirements for corporate governance for YSX-listed companies and public companies with more than 100 shareholders and Instruction 3/2020 sets out the requirements and procedures in relation to the disclosure of all related-party transactions.

The release follows the initial signing of a memorandum of understanding (**MoU**) in 2018 between the SECM and the Organisation for Economic Cooperation and Development (**OECD**) to provide technical assistance with respect to the corporate governance reforms. At the same time, the Advisory Committee for Corporate Governance Reform was formed, comprising representatives of the OECD, IFC, CBM, DICA, SECM, MICPA and UMFCCI, with a view of improving corporate governance in the Myanmar.

Key Features of Notification 2/2020

Notification 2/2020 is comprised of 7 chapters and 15 provisions, touching on four main areas of corporate

governance: shareholders' rights, board of directors, related party transactions, and directors' report and disclosure.

1. Shareholders' Rights

Chapter 3 of Notification 2/2020 sets out the requirements imposed on a company relating to shareholders' rights, namely: facilitating the ease of voting, ensuring the accuracy and sufficiency of information to allow shareholders to exercise voting rights, and establishing and disclosing a policy on dividends.

2. Board of Directors

Chapter 4 sets out the provisions relating to the board of directors with respect to composition, meetings and the audit committee.

Section 6 of Notification 2/2020 requires a listed company to have at least one independent director on the board of directors. Notification 90/2020 "*Notification relating to Independent Directors*" (**Notification 90/2020**), issued by the Directorate of Investment and Company Administration (**DICA**) on 14 October 2020, sets out the qualifications for independent directors, namely that an Independent Director must not (i) be a current or former employee of the company or its related companies during the past three financial years; (ii) have a family member being a current or previous employee of the company or its related companies during the past three financial years; (iii) directly or indirectly own more than one fifth of the capital or voting rights in the company; (iv) be an executive officer in the other companies which have financial relations with the company.

¹ <https://secm.gov.mm/wp-content/uploads/2020/12/CG-Notification-Eng-Version.pdf>

² <https://secm.gov.mm/wp-content/uploads/2020/12/RPT-Instruction-Final-Eng-Version.pdf>

Section 7 of Notification 2/2020 sets out the responsibilities of the board of directors of a listed company and a public company with more than 100 shareholders, requiring the board to (i) review and guide corporate strategy, annual budget and business plan with a view of long-term sustainable business growth; (ii) oversee internal control systems; (iii) ensure compliance with the law and relevant standards with respect to accounting and financial reporting systems; (iv) ensure timely and accurate disclosures of all material events relevant to the company; and (v) oversee stakeholder communications.

Further, Chapter 4 sets out that the board of directors must meet at least four times per year and a listed company is required to have an audit committee, which must be comprised of at least three directors and be chaired by an independent director. The audit committee must meet once every three months and, in any event, whenever convened by the board of directors.

3. *Related Party Transaction*

Chapter 5 is concerned with related party transactions and requires the board of directors to review a policy on the materiality of related party transactions, ensure all material related party transactions are disclosed in a timely manner and requires that all material related party transactions must be approved by the board of directors, with any directors with a potential interest being required to abstain from voting.

4. *Disclosures and Directors' Reports*

Chapter 6 sets out the requirements relating to what must be reported on in the directors' report, broadly requiring disclosure in relation to the policy on dividends, structure of the board of directors and the number of meetings of the board and special committees held annually and attendance, internal control systems, independent directors, members of the audit committee, material transactions and remuneration of directors and executive officers and related persons.

Key Features of Instruction 3/2020

Also on 3 December 2020, Instruction 3/2020 was published, which defines a material related party transaction and various other relevant terms, in addition to setting out obligations on the board of directors in relation to material related party transactions, therefore overlapping partly with Instruction 2/2020.

Definition of Material Related Party Transactions

Instruction 3/2020 defines a material related party transaction as “any related party transactions, either each transaction or total of all transactions over a twelve month period, amounting to or more of five percent of a company’s total assets as per the last audited annual financial statements of the company or one hundred 100 million Kyats, whichever is higher.”

Where a related party transaction meets the materiality threshold, it will be considered a material related party transaction and will be subject to the requirements of Instruction 3/2020.

Requirements relating to Material Related Party Transactions

As prescribed by Instruction 3/2020, any material related party transactions must be approved by the board of directors and the board of directors shall have the overall responsibility for ensuring the transaction is handled in a sound and prudent manner, with integrity, at arm’s length and are reasonable in the circumstances and in compliance with applicable laws and regulations with a view of protecting the interests of the company’s shareholders and other stakeholders.

The board of directors must also adopt a material related party transactions policy which must identify the related parties, include a materiality threshold not exceeding the threshold set out in Instruction 3/2020, set out a procedure on how transactions below the materiality threshold are reviewed and approved and cover the identification and prevention or management of potential conflicts of interest which may arise out of or in connection with related party transactions. The policy must also set out disclosure requirements which apply in relation to the board, executive officers and substantial shareholders in relation to the disclosure of material facts related to material related party transactions. The material related party transaction policy must be published on the company website and a material related party transaction disclosure report must be submitted to the SECM within five business days after the closure of the relevant material related party transaction. In the case of a listed company, the material related party transaction report must be publicly disclosed within three calendar days after the closure of the transaction. Material related party transactions must also be reported to shareholders in the company’s annual report, complying with minimum disclosure requirements as set out in section 11 of Instruction 2/2020.

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