



## **Myanmar Companies Law (2017)**

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Business can be incorporated in the following type of the company & corporations.

### **1. Type of the company**

#### **(a) Private Company**

- (i) Limited by shares
- (ii) Limited by guarantee S-14
- (iii) Unlimited

#### **(b) Public Company**

- (i) Limited by shares
- (ii) Unlimited

#### **(c) Corporations**

- (i) Business Association
- (ii) Overseas Corporation
- (iii) Other corporation

### **Differences between Private Company and Public Company**

	<b>Private Company</b>	<b>Public Company</b>
<b>Number of Shareholders (Members)</b>	Minimum 1 & Maximum 50	Minimum 1 & Maximum no limits
<b>Number of Director</b>	Minimum 1 & Maximum no limits **at least (1) director who must be ordinarily resident in the Union.	Minimum 3 & Maximum no limits **at least (1) director who must be ordinarily resident in the Union

	<b>Private Company</b>	<b>Public Company</b>
<b>Share Transfer</b>	Right to transfer could be restricted in the constitution	Freely transferable
<b>Notice of Share Transfer</b>	Within 21 days of the registration of the transfer of shares the company must file notice of the transfer in the C3 Form with the Registrar.	
	If as a result of the transfer the company has either become or ceased to be a foreign company, the notice must state this.	

Note: Public company shall file with the Registrar a notice in the C3 form of any changes to its register of members only in respect of the 50 members holding the largest number of shares in the company (or such other members if the company has less than 50 members). (Notification 59/2018)

	<b>Private Company</b>	<b>Public Company</b>
<b>Restriction on allotment of shares to the public</b>	Must not offer its shares or other securities to the public	Can offer its share to the Public after issuing Prospectus. *a public company must not allot any share capital offered to the public for subscription Unless A minimum amount of 500,000,000 kyats has been subscribed (Notification 59/2018)

**\*\*Ordinarily resident**

Ordinarily Resident means a person who is a permanent resident of the Union under an applicable law or is resident in the Union for at least 183 days in each 12 month period commencing from:

- (a) In the case of an existing company or a body corporate registered under a repealed law, the date of commencement of this law. (1 August 2018); and
- (b) In the case of any company or body corporate registered under this law, the date of registration of the company or body corporate.

**Note:** It is important to note that the shareholders of the Company are responsible for having a director ordinarily resident in the Union of Myanmar on the Board. In case where the sole resident director is leaving Myanmar or no local director is remaining due to other reasons, the shareholders will be duty-bound to appoint a new resident director as soon as possible, but no later than six months. If no such replacement is made within that period and the business continues to operate after the six months' deadline expires, the shareholders could be held personally accountable for the Company's debts and liabilities.

If a Company appoints a new director, or a person ceases to be a director of the Company because he or she has resigned, be removed or become unfit to be a director, such change shall be filed with DICA within 28 days from the date of the change.

## **2. Annual Return**

According to Myanmar Companies Law (2017) section (97) an incorporated companies have responsibility to submit (Annual return – AR) within two (2) months from its incorporation and thereafter at least once in every year (but no later than one (1) month after the anniversary of its incorporation), a Company must file a return of its particulars with DICA in the prescribed form to confirm and update its particulars.<sup>46</sup>

Non-compliance with this requirement will result in the suspension and ultimately the strike off of the Company from the register.

## **3. “Foreign company”**

### **Foreign company**

- A company incorporated in the Union
- an overseas corporation or other foreign person
- owns or controls, directly or indirectly,
- an ownership interest of more than 35% by foreigner

### **What is ownership interest?**

A legal, equitable or prescribed interest

- a direct shareholding in the company;
- a direct or indirect shareholding in another company which itself holds a direct shareholding, or an indirect shareholding, in the first company; or
- through an agreement which provides a direct or indirect right to exercise control over the voting rights on any resolution of the company;

### **Requirement for Foreign Company**

- State in company registration application
- State whether **share transfer** causes a company to become or cease to become a Foreign Company
- State in the **annual return** whether a company has become or cease to become a Foreign Company

## **4. Small company**

“Small company” means a company (other than a public company or subsidiary of a public company) which satisfies the following conditions:

- (A) it and its subsidiaries have no more than 30 employees; and
- (B) it and its subsidiaries had annual revenue in the prior financial year of less than 50,000,000 Kyats in aggregate (S-1 (c) (38))

A company formed under the Special Company Act 1950 shall not qualify as a small company under the Law.

If company match with small company criteria, it can get “Exemption”

YSection 146(e) – AGM exemption

YSection 257(c) – Financial reporting and audit exemption

### **Exemption But”**

Section 146 (e) This does not apply to a small company unless:

- (i) the constitution of the company includes those requirements;
- (ii) the members determine to apply those requirements by passing an ordinary resolution; or
- (iii) the Registrar (DICA) determines that those requirements should apply.

Unless exempted as a Small Company, the financial statements of a Company shall be audited by an independent auditor.

## **5. Overseas Corporation**

### **“Overseas Corporation”**

“Overseas Corporation” means a body corporate that is incorporated outside the Union. (S-1) (c) (21)

- Unless it is registered, must not carry on business in the Union.
- Must have one authorized officer.
- Authorized officer → a person ordinarily resident in the Union, appointed by an overseas corporation to act as its representative.
- No need to apply permit to trade for Foreign Company, Representative Office and Branch Office.

### **S 43 not deemed to carry on business in the Union merely because in the Union.**

- is or becomes a party to a legal proceeding
- holds meetings of its directors or shareholders
- maintains a bank account
- sale of property through an independent contractor
- solicits or procures an order that becomes a binding contract only if the order is accepted outside the Union
- lends money, creates evidence of a debt or creates a charge on property
- secures or collects any of its debts
- conducts an isolated transaction that is completed within a period of 30 days (not repeated transaction)
- invests its funds or holds property.

### **S 51 – Alteration of details (Oversee Corporation (S.51))**

- an alteration to the constitution of the overseas corporation
- notice \_ within 28 days of the change

- a change in the directors or in the names or residential addresses of the directors of the overseas corporation
- Notice –within 28 days of the change
- a change in the address of the registered office or principal place of business of the overseas corporation
- Overseas (Notice – within 28 days of the change)
- in the Union (Notice – prior change)
- a change in the authorized officer or the address of the authorized officer or the appointment or change in details of any other person authorized to accept service of documents in the Union on behalf of the overseas corporation.
- Notice – within 7 days.
- Fails to comply with S-51, every director and the authorized officer will be liable to a fine of 250,000 kyats.

### **S 53 Annual filings by Overseas Corporation**

Every overseas corporation conducting business in the Union shall file with the Registrar:

- (i) Within 28 days of the end of its financial year, an annual return in the prescribed form; and
- (ii) At least once each calendar year and at intervals of no more than 15 months:
  - (a) A balance sheet made up to the end of its last financial year;
  - (b) A copy of its cash flow statement for its last financial year; and
  - (c) A copy of its profit and loss statement for its last financial year;

in such form and containing such particulars and including copies of such documents as the corporation is required to prepare by the law in its place of origin. (Section – 53 (a))

If an overseas corporation fails to comply with any requirements of section 53, it and every director and the authorized officer will be liable to a fine of 250,000 kyats in respect of each breach. (Section – 54)

### **6. Company Constitution (CC)**



- CC is statutory contract between members and the company and have been signed by each member.
- Each of the members of the company named in the application for incorporation and each subsequent member shall be deemed to be bound by the constitution.

## **Contents of a Constitution**

- (a) Contain the matters contemplated in this law and other matters that the company wishes to include, provided that at all times the constitution has no effect to the extent that it is inconsistent with this law.
- (b) Objects of the company.
- (c) Registered office of the company will be situated in the Union.
- (d) MOA, any AOA and other constituent document of an existing company shall take effect as the constitution of such company following the commencement of this law, but no effect to the extent that it is inconsistent with this law.
- (e) The object expressed in the previous MOA & AOA continues to apply until the end of the transition period unless removed by the members by voting.

## **Format of Constitution**

The constitution of a company

- (a) must be prepared in Myanmar language; and
- (b) may also be prepared in English language (in addition to Myanmar language); and
- (c) must be divided into paragraphs numbered consecutively.

## **7. Auditors**

### **S 279 – Qualifications and appointment of auditor (Section 279)**

- To be appointed or act as an auditor of a public company or a subsidiary of a public company, holds a certificate from such other person or body authorised under an applicable law entitling him to act as an auditor of companies: Provided that a firm whereof all the partners practising in the Union hold such certificates may be appointed by its firm-name to be auditor of a company, and may act in its firm name.
- Every company shall appoint an auditor or auditors at each annual general meeting by making ordinary resolutions.
- If an appointment of an auditor is required and is not made at an annual general meeting, the Union Minister may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to the auditor by the company for his services.
- The first auditors of a company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

- Following person shall not be appointed auditor of the company.

- (i) Director or officer of the company
- (ii) A partner of such director or officer
- (iii) In case of public company or subsidiary of a public company, any person in the employment of such director or officer
- (iv) Indebted to the company.



The auditor has a right of access at all times to the financial records, books and accounts and vouchers of the Company, and is entitled to such information and explanation from the directors and officers of the company as deemed necessary.

The auditor shall make a report to the Members of the Company on the accounts examined by him, and on every financial statement laid before the Company at its annual general meeting.

## **8. Directors**

- Directors of a Company may be Myanmar citizens or foreigners, residing within or outside of Myanmar, provided that every Company must appoint at least one (1) director who is ordinarily resident in the Union of Myanmar.
- Directors can be appointed by ordinary resolution at AGM.
- Casual vacancy will be filled by appointment of another director.
- All appointment must be approved at the AGM.
- Removal of director (S 174) - Company can remove the director by passing ordinary resolution at AGM or written resolution.
- Rotation of director (S 173 (b)) - In the case of public companies, subject to the constitution of the company or any other applicable law, at each annual general meeting one third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one third shall retire from office. The directors to retire in any such meeting will be those who have been longest in office since the last election, but as between persons who became directors on the same day those to retire shall be determined by the chairman. Section - (173 (b))
- Qualification of directors (S 175) –
  1. Natural Person above 18
  2. Not Bankrupt
  3. Without prejudice the qualification as per constitution
  4. Sound Mind
  5. Shall meet share qualification per constitution
  6. Registrar could prescribe the qualifications, rights and duties of independent director
  7. No breach of obligation or duty of director
- Duties of directors and officers (S 165 to S 172) - contain the main duties imposed on directors and officers but do not limit duties imposed elsewhere under this Law or any other applicable law.
  - 165. Duty to act with care and diligence
  - 166. Duty to act in good faith in the company's best interest
  - 167. Duty regarding use of position
  - 168. Duty regarding use of information
  - 169. Duty to comply with the Law and constitution
  - 170. Duty to avoid reckless trading
  - 171. Duty in relation to obligations
  - 172. Duty to disclose certain interests

- Powers of directors - the business of a company is to be managed by or under the direction of the board of directors or, in the case of a single director company, the single director. Directors may inspect the books and records of the company at all reasonable times. Director who has ceased to act as a director may at all reasonable time during the period of seven years after ceasing to be a director, inspect and take copies of the books and records of the company for the purpose of a legal proceeding.

### **9. Company Secretary (CS) (Section 179)**

- Company Secretary is not compulsory to appoint.

- (a) A secretary may be appointed by a resolution of the directors.
- (b) Only a natural person who is at least 18 may be appointed as a secretary.
- (c) A Secretary must be of sound mind.
- (d) A person who has been disqualified from acting as a director, officer or secretary under this law or any other applicable law may not act as a secretary during the period of their disqualification.

### **10. Records to be kept by company for preparation of financial statements (Section 258)**

- Every company shall keep written financial records to enable the preparation of financial statements in Myanmar Language or English Language.
  - All sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place;
  - All sales and purchases of goods by the Company;
  - All assets and liabilities of the Company; and
  - Any other financial matters prescribed under this Law or other applicable law.<sup>47</sup>
- The records shall be kept at the registered office address of the Company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.
- Any directors or officers who have knowingly by their act or omission been the cause of any default by the company in complying the requirements of S 258 shall be liable to a fine of 750,000 Kyats.

### **11. Common Seal**

A Company may adopt a common seal, but is not required to do so.

If a Company has adopted a common seal, it may execute a document with the seal is affixed, if the execution is witnessed:

- If the Company has only one (1) director - that director;
- Two (2) directors of the Company; or
- A director and a company secretary of the Company.

## **12. Bank Account**

A Company shall open and maintain at least one (1) bank account with a licensed bank in Myanmar.

It should be noted that while a Company is in principle permitted to open bank accounts outside of Myanmar, the Foreign Exchange Management Regulations (2014) stipulate that such account opening shall require the prior approval of the Central Bank of Myanmar. In practice, such approval is rarely granted.

## **13. Registered Office Address**

Every Company shall from the date of its incorporation maintain a registered office address in Myanmar to which all communications and notices may be addressed.

The registered office does not have to be the same address as the Company's business address, and many Companies choose to register their address with the company secretary.

Any change of the registered office address (or the main business address) shall be registered with DICA.

## **14. Myanmar Accounting Standards**

Myanmar Companies Law (MCL) and Myanmar Accountancy Council Law 2015 (as amended from time to time) are the key legislation governing on corporate compliance and audit requirements for the businesses operating in Myanmar. If there is any conflict between these two laws, the requirements set out in the Myanmar Accountancy Council Law will be deemed to be sufficient.

Start from financial year 2022-23, financial statements must be prepared in accordance with the International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS) & IFRS for SMEs that was announced by Myanmar Accounting council (MAC).

## **15. Auditing and Compliance Requirements**

Myanmar operates two assessment systems which are called as self-assessment system (SAS) and official assessment system (OAS).

If a corporate taxpayer is under SAS system, then an audited financial statement is not required to submit to the Internal Revenue Department (IRD). However, a corporate taxpayer must submit an audited financial statement to Directorate of Investment and Company Administration (DICA) and also to IRD, if it is under OAS system.

Small companies which are operating under 30 employees and income revenue under MMK 50 million are exempted from submitting the financial statements to Directorate of Investment and Company Administration (DICA).

## **16. Myanmar Financial Year-End**

The tax assessment year for all taxpayers is from October 1 to September 30 starting from 1 October 2019. This financial year is mandatory for all businesses operating in Myanmar and audited financial statements inclusive of any corporate income tax must be submitted to the tax authorities annually without any default.

## **17. Reporting Currency**

The statutory reporting currency is in MMK/Kyats.

## **18. Ordinary Resolutions – Passed by a majority of votes (Section 1(e) (20))**

- Appointment a director and removal of a director
- Appointment of an auditor
- Approval of financial reports
- Approval of benefits and pay for directors' (Approval of director's fees)
- Shareholder resolutions must be passed by ordinary resolution unless the law requires a special resolution (Section 155)

## **Special resolution – Passed by 75% or more of votes (Section 1(e)(40))**

- Change of the company name
- Change of the company type
- Alteration of the constitution
- Approval of capital reduction and share buy-back
- Issue preference shares
- Conversion of shares.
- Voluntary winding up of the company and appointment of a liquidator.
- Changes of the company's share capital or share classes.