

DRAFT COMPANIES REGULATIONS 2018

1. Citation and commencement of regulations

- (a) These regulations shall be called the *Myanmar Companies (Electronic Registry System and Miscellaneous Matters) Regulations 2018*.
- (b) These regulations shall commence on 1 August 2018.

2. Definitions

- (a) In these regulations, unless the context otherwise implies:
 - (i) “**electronic registry system**” means the electronic registry system established by the Registrar under section 421 of the Law;
 - (ii) “**Law**” means the Myanmar Companies Law 2017;
 - (iii) “**re-registration period**” means the period of six months from the date of commencement of the Law, or such longer period as may be determined by the Registrar by notification;
 - (iv) “**registry transaction**” means:
 - (A) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar, under the Law;
 - (B) the making of any application, submission or request to the Registrar under the Law;
 - (C) the provision of any declaration to the Registrar under the Law; and
 - (D) the extraction, retrieval or accessing of any document, record or information maintained by the Registrar under the Law.
- (b) All words used in these regulations which have been defined in the Law shall have the same meaning as given to them in the Law, unless otherwise stated.

3. Electronic registry system

- (a) The Registrar shall establish and maintain the electronic registry system. Any registry transaction under the Law shall be carried out using the electronic registry system.
- (b) The Registrar may determine the manner in which a registry transaction may be carried out on the electronic registry system and may require a registry transaction to be carried out only by electronic means on the electronic registry system.
- (c) If a registry transaction cannot be carried out using the electronic transaction system, the person seeking to carry out the registry transaction must carry out the registry transaction in such other form and manner as the Registrar may determine.
- (d) The Registrar may by notification prescribe the fees payable in connection with registry transactions, the operation of the electronic registry system and late filing or lodgment fees and may prescribe different fees for registry transactions carried out using non-electronic means.

- (e) The Registrar may refuse to process a registry transaction if the person seeking to carry out the registry transaction:
 - (i) being required to complete a prescribed form, fails to properly complete the form in accordance with the instructions contained in the form;
 - (ii) being required to attach any document to, or provide any information required in a prescribed form, fails to attach the document or provide the information, as the case may be; or
 - (iii) fails to pay the fee prescribed for the registry transaction.
- (f) A company shall ensure that all forms and documents filed or lodged through the electronic registry system are properly executed and kept together with the company's registers and indexes at the registered office, principal place of business or any other place at which the company's registers and indexes are maintained under the Law.
- (g) The Registrar may by electronic means on the electronic registry system:
 - (i) issue a notice, certificate or document which is required to be issued by the Registrar under the Law;
 - (ii) certify a form, document or extract of a document required to be certified by the Registrar under the Law; and
 - (iii) send any document referred to in sub-section (g)(i) and (g)(ii) which is issued or certified by the Registrar to the electronic addresses notified by a company or body corporate for that purpose.
- (h) The Registrar may require the production of the identity card or the passport, or such other identification documents as may be acceptable to the Registrar, for the verification of the identity of any person who carries out any registry transaction or whose particulars are to be registered under the Law.

4. Re-registration of existing companies and other body corporates

- (a) All existing companies and body corporates registered with the Registrar prior to the commencement of the Law must re-register on the electronic registry system within the re-registration period.
- (b) The Registrar may serve written notices on existing companies and body corporates regarding re-registration under these regulations.
- (c) If an existing company does not re-register on the electronic registry system within the re-registration period, the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and, on the publication in the Gazette of this notice, the company shall be dissolved: Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.
- (d) The Registrar may restore an existing company or body corporate that has failed to re-register on the electronic registry system within the re-registration period, prior to its name being struck off the register, and may determine any fee payable for such restoration.

- (e) An existing company or body corporate which does not re-register within the re-registration period must not carry on business in the Union until it is restored by the Registrar under sub-section (d).

5. **Application for re-registration**

- (a) An application for the re-registration of an existing company or body corporate must be made to the Registrar in the prescribed form and must state:
 - (i) the full name, date of birth, gender, nationality and address of every director and any secretary of the company or body corporate;
 - (ii) the address of the registered office of the company or body corporate;
 - (iii) the address of the principal place of business of the company or body corporate (if different to the registered office);
 - (iv) in the case of an existing company:
 - (A) the full name and address of every member of the company, and the number and class of shares issued to each member;
 - (B) whether the company has an ultimate holding company; and
 - (C) whether the company will, on re-registration, be a foreign company; and
 - (v) any other matters set out in the prescribed form.
- (b) An application for re-registration of an existing company or body corporate must be accompanied by a copy of the constitution of the company or body corporate or, if applicable, a statement that the company or body corporate has adopted the model constitution prescribed under these regulations.
- (c) When the Registrar receives a completed application for re-registration which complies with sub-sections (a) and (b) the Registrar must:
 - (i) enter the details of the existing company or body corporate on the electronic registry system;
 - (ii) issue a certificate of registration in respect of the company or body corporate; and
 - (iii) issue a new registration number in respect of the company or body corporate.
- (d) A certificate of registration of an existing company or body corporate issued under sub-section (c) is conclusive evidence that:
 - (i) all the requirements of the Law in respect of registration have been complied with; and
 - (ii) on and from the date of registration stated in the certificate, the company or body corporate is duly registered under the Law.

6. **Status of re-registered entities**

The re-registration of an existing company or body corporate under these regulations does not:

- (a) create a new legal entity;

- (b) affect the property, rights, or obligations of the company or body corporate;
- (c) affect any proceedings by or against the company or body corporate (or its members);
or
- (d) affect the liability of the company or body corporate for any amounts payable by way of penalty or default in respect of matters that were required to be done by any applicable law.

7. Rules for re-registered companies

- (a) When an existing company is re-registered, all shares issued by the existing company before re-registration are deemed to be converted into shares of no par value but that conversion does not affect the rights and obligations attached to the shares, and in particular does not affect:
 - (i) the entitlements of the holder of the shares in respect of distributions, voting, the redemption of any redeemable shares, or the distribution of surplus assets of the company in a liquidation; and
 - (ii) any unpaid liability of a shareholder in respect of a share.
- (b) An existing company or body corporate may resolve to adopt a new constitution that differs from its Memorandum of Association and Articles of Association upon re-registration under these regulations.
- (c) An existing company or body corporate which is a private company limited by shares may resolve to adopt the model constitution upon re-registration under these regulations.

8. Exemption from filing annual return during re-registration period

An existing company or body corporate which is required to file an annual return in accordance with section 97 of the Law shall not be required to file an annual return which falls due during the re-registration period.

9. Transitional provisions relating to abolition of par or nominal value of shares

- (a) Section 60(b) of the Law shall apply to all shares, whether issued before, on or after the commencement date of the Law.
- (b) For the purposes of the Law, for a share issued before the commencement date of the Law:
 - (i) the amount paid on the share is the sum of all amounts paid to the company at any time for the share; and
 - (ii) the amount remaining unpaid on the share is the difference between the price of issue of the share and the amount paid on the share.
- (c) The liability of a shareholder for calls in respect of money remaining unpaid on shares issued before the commencement date of the Law (whether on account of the nominal value of the shares or by way of premium) is not affected by the share ceasing to have a nominal or par value.
- (d) On the commencement date of the Law, any amount standing to the credit of a company's share premium account and capital redemption reserve shall become part of the company's share capital.

- (e) Notwithstanding sub-section (d), a company may, on or after the commencement date of the Law, use the amount standing to the credit of its share premium account immediately before the commencement date of the Law to:
- (i) provide for the premium payable on redemption of debentures or redeemable preference shares issued before that day;
 - (ii) write off:
 - (A) the preliminary expenses of the company incurred before that day; or
 - (B) 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;
 - (iii) 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;
 - (iv) pay up in whole or in part the balance unpaid on shares issued before that day to members of the company; or
 - (v) pay dividends declared before that day, if such dividends are satisfied by the issue of shares to members of the company.
- (f) For the purpose of interpreting and applying, on or after the commencement date of the Law, a contract (including the constitution of the company) entered into before that day or other document executed before that day:
- (i) a reference to the par or nominal value of a share shall be a reference to:
 - (A) if the share is issued before that day, the par or nominal value of the share immediately before that day;
 - (B) if the share is issued on or after that day but shares of the same class were on issue immediately before that day, the par or nominal value that the share would have had if it had been issued then; or
 - (C) if the share is issued on or after that day and shares of the same class were not on issue immediately before that day, the par or nominal value determined by the directors, and a reference to share premium shall be taken to be a reference to any residual share capital in relation to the share;
 - (ii) a reference to a right to a return of capital on a share shall be taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par or nominal value; and
 - (iii) a reference to the aggregate par or nominal value of the company's issued share capital shall be taken to be a reference to that aggregate as it existed immediately before that day as:
 - (A) increased to take account of the nominal value of any shares issued on or after that day; and
 - (B) reduced to take account of the nominal value of any shares cancelled on or after that day.

10. **Company constitution**

- (a) A private company limited by shares registered under the Law may adopt the model form of constitution set out in Schedule One.
- (b) If a provision in the Memorandum of Association or Articles of Association of an existing company which is registered before the commencement date of the Law provides for:
 - (i) the amount of share capital with which the existing company proposes to be registered or is registered; or
 - (ii) the division of the share capital of the company into shares of a fixed amount, the provision is, for all purposes, to be regarded as deleted and not to be regarded as a provision of the company's constitution.
- (c) In any other document, a reference to:
 - (i) the Memorandum of Association or Articles of Association of a company is a reference to the company's constitution; and
 - (ii) a provision of the Memorandum of Association or Articles of Association of an existing company is a reference to a provision of the company's constitution.

11. **Ordinarily resident director**

- (a) A director of a company shall not resign or vacate his office unless there is remaining in the company at least one director who is ordinarily resident in the Union and any purported resignation or vacation of office in breach of this sub-section shall be deemed to be invalid.
- (b) If there is a contravention of sub-section (a), the Registrar may either of his own motion or on the application of any person, direct the members of the company to appoint a director who is ordinarily resident in the Union if he considers it to be in the interests of the company for such appointment to be made.
- (c) If a company carries on business without having at least one director who is ordinarily resident in the Union for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months:
 - (i) is a member of the company; and
 - (ii) knows that it is carrying on business in that manner,shall be liable for the payment of all the debts of the company contracted during the period or, as the case may be, that part of it, and may be sued therefor.

12. **Carrying on business**

For the purposes of section 43 of the Law, to "carry on business":

- (a) includes the administration, management or otherwise dealing with property situated in Myanmar as an agent, a legal personal representative, or a trustee, whether by employees or agents or otherwise; and
- (b) does not exclude activities carried on without a view to any profit.

13. **Companies formed under the Special Company Act 1950**

- (a) A company in which a Myanmar Government body holds any share shall be formed under the Special Company Act 1950 and registered under the Law as a public company limited by shares or a private company limited by shares in accordance with section 37(a) of the Law.
- (b) A company formed under the Special Company Act 1950 shall be subject to the provisions of the Law applicable to companies limited by shares, including in relation to the filing and lodgment of documents with the Registrar, unless otherwise expressly permitted under the Special Company Act 1950.
- (c) If a Myanmar Government body ceases to hold any shares in a company formed under the Special Company Act 1950, the provisions of the Special Company Act 1950 shall cease to apply to the company and the company shall be taken to be formed and registered under the Law, and the Registrar shall alter the details of the company in the register and issue a new certificate of registration in respect of the company.
- (d) A change of status of a company under sub-section (c) does not:
 - (i) create a new legal entity;
 - (ii) affect the property, rights, or obligations of the company;
 - (iii) affect any proceedings by or against the company (or its members); or
 - (iv) affect the liability of the company for any amounts payable by way of penalty or default in respect of matters that were required to be done by any applicable law.
- (e) A company formed under the Special Company Act 1950 shall not qualify as a small company under the Law.

14. **Small company**

For the purposes of section (1)(c)(xxxviii) of the Law, a small company must satisfy the conditions set out in that section throughout the financial year.

SCHEDULE ONE

Model Constitution for Private Companies Limited by Shares

[to be attached]

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