

Company Directors Guide

A Guide to the Myanmar Companies Law 2017



Directorate of Investment and Company Administration

Company Directors Guide

**A Guide for Company Directors to
the Myanmar Companies Law 2017**

Note: The information in this guide is intended to provide general information to companies and their directors. It does not constitute legal or professional advice. Please seek professional advice as required.

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1 COMPLIANCE CHECKLIST

Set out below is a checklist of the common legal requirements you must comply with if you operate a business using a company.

- ✓ **Have a registered office**
Your company must have a registered office in Myanmar and must inform DICA of its location. If your company conducts business from a location that is different from the registered office, you must also inform DICA of its location.
- ✓ **Keep proper company registers and records**
You must maintain up-to-date company registers (such as the register of members and register of directors and secretary) as required by law. You must also maintain financial records that correctly record and explain transactions and the company's financial position and performance. If your company is required to by law, you must also prepare audited financial statements and public companies must lodge their financial reports with DICA.
- ✓ **Disclose details of directors**
You must inform DICA of the name, date of birth, gender, nationality and current residential address of directors (and company secretary if your company has appointed one). You must also inform DICA if there are any changes to the directors or secretary of your company.
- ✓ **Notify DICA of changes to your company**
You must notify DICA of changes to your company details, such as issuing new shares, transferring shares, changes to shareholders or directors, the company constitution, company name or the registered office address. There are time limits for notifying DICA of such changes and late fees may apply for late filings.
- ✓ **Submit annual return every year**
Once every year, you must ensure that your company's details on the MyCO registry are accurate and up-to-date by submitting an annual return. It is mandatory for **all companies** to submit an annual return and failure to do so may result in your company being suspended or struck off from the DICA's register.
- ✓ **Pay relevant fees to DICA**
DICA imposes filing fees when registering a company and filing certain documents. These fees must be paid by the company. DICA may also impose late fees if you do not notify changes to your company's details in time.
- ✓ **Comply with directors' duties**
A director of company must act with care and diligence and in the company's best interests (not in their own personal interest). A director must make the interests of the company, its shareholders and its stakeholders including creditors a priority. A director must also use their position as director and any information they receive properly and not to gain an advantage for themselves or cause detriment to the company. A director must also comply with the Myanmar Companies Law and company constitution and ensure the company is solvent.

2 OPERATING BUSINESS AS A REGISTERED COMPANY

A company registered under the Myanmar Companies Law 2017 (**Companies Law**) can be used to conduct business in Myanmar. The Directorate of Investment and Company Administration (**DICA**) is the Registrar of Companies in Myanmar and is the government agency responsible for registering companies and for ensuring that companies comply with the Companies Law.

A company which is registered with DICA can conduct business throughout Myanmar, without needing to register separately in the states and regions.

2.1 KEY CHARACTERISTICS OF A COMPANY

A registered company has many special features. It is a separate legal entity – it exists under the law in its own right and can do nearly all of the things that a natural person can do, such as enter into contracts, borrow money, and buy and sell assets.

A company's key features are:

- It is a separate legal entity, distinct from its members (i.e. shareholders) and directors.
- It remains in existence legally until it is wound up or struck off the register.
- It has the same capacity and powers as natural persons.
- It is entitled to certain privileges (e.g. a corporate tax rate, limited liability).
- It can enter into contracts, sue and be sued, and buy and sell assets in its own name.
- It can hold money and assets that must be used for the company's purpose.
- It is governed the company constitution, which contain legally binding rules on the rights and responsibilities of the company, its shareholders and directors.

2.2 BENEFITS OF FORMING A COMPANY

❖ Limited liability

Limited liability is one the key benefits of a company. Shareholders of a limited liability company are not liable for the debts of the company, unless they have not fully paid for their shares prior to the company being placed in liquidation (in which case, they are liable to the liquidator for any unpaid money owing on their shares).

Limited liability offers protection for a company's owners and investors if the company is unable to pay its debts and becomes insolvent. It is only the liability of the shareholders that is limited. The company is liable in full for all obligations and debts that it incurs.

By contrast, a sole trader or a person trading in partnership will always be exposed and personally liable for all business debts that cannot be met by business funds.

❖ Continuity of existence

A company will continue to exist until it is wound up or struck off from the MyCO registry. It can continue to survive after changes in ownership or management.

By contrast, a sole trader's business ceases to exist if the trader dies or stops trading. Similarly, in the case of a partnership the retirement or death of a partner usually brings that partnership to an end.

❖ **Transferability of shares**

Shareholders of a company can sell or otherwise dispose of their shares, subject to any restriction imposed in the company constitution and the law. This makes a company much easier to sell or transfer ownership to others, compared to other business structures.

By contrast, a business run by a sole trader will be more complicated to transfer as business assets and liabilities will be held in a person's name. A partnership interest is generally not able to be assigned or transferred unless the partnership is ended.

❖ **Marketplace credibility**

A company is an internationally recognised business structure. It enjoys greater credibility and recognition in the international business community than a sole trader business. Many enterprises may start as sole traders, but usually upgrade to a company once they become established.

By contrast, a sole trader business and partnerships are much less commonly used for established businesses internationally.

❖ **Control by shareholders**

A company allows shareholders, as owners of the business, to control some of the key decisions of the business without being involved in the day-to-day management. The management of the business affairs is the task of the company's directors.

In many smaller companies, the shareholders can also be the directors of the company. In larger companies, most shareholders are not directors and have no say in its daily operations.

One of the key decisions that shareholders of a company participate in is the appointment and removal of directors of the company. This gives shareholders the ultimate control of the company without necessarily being concerned in its day-to-day affairs.

2.3 DIFFERENT TYPES OF COMPANIES THAT CAN BE REGISTERED

There are three main types of companies which can be registered under the Companies Law. They are a company limited by shares, a company limited by guarantee or an unlimited company.

❖ **Company limited by shares (private or public)**

In a company limited by shares, the liability of shareholders is limited to the amount unpaid on their shares. A company limited by shares is the most common type of company used in Myanmar and in international business.

A company limited by shares can either be a private company or a public company:

- A **private company** must limit the number of shareholders to 50 (excluding employees), must not issue any invitation to the public to subscribe for shares or other securities and may restrict the transfer of shares in its constitution.
- A **public company** is a company which does not meet the conditions for a private company. Hence, a public company can invite the public to buy shares in the company and can have as many shareholders as it wishes.

❖ **Company limited by guarantee**

In a company limited by guarantee, the liability of members is limited to the amount that the member undertakes to contribute if the company is liquidated and there are insufficient assets to pay any

outstanding debts. This amount of the member guarantee is usually specified in the company's constitution.

❖ **Unlimited company**

An unlimited company does not have any limit on the liability of its members. Therefore, members have an obligation to meet any outstanding financial liability of the company which cannot be repaid from its assets in the event of liquidation. This type of company is much less commonly used.

What is a single director single shareholder company?

Under the Companies Law, a private company can be established with at least one shareholder and one director who ordinarily resides in Myanmar. The sole director can also be the sole shareholder of a private company. Therefore, a single person can now register a company Myanmar.

The sole director and shareholder of a company is responsible for managing the company's business and may exercise all of the company's powers. Similarly, a sole director and shareholder of a private company can appoint another director by recording the appointment and signing the record.

Even a single director and shareholder company must keep minutes (a written record) of their resolutions concerning the management of the company. If you are the sole director and shareholder of a company, you may pass a resolution by recording and signing your decision.

All of the other requirements for companies under the Companies Law also apply equally to a company with a single director and shareholder. For example, the company must notify DICA of changes to the company's details and submit an annual return (see Chapter 6 for further details).

2.4 SMALL COMPANIES

To help reduce the regulatory burden on small and medium businesses, the Companies Law provides special exemptions to "small companies" (as defined in the law). A "small company" is a company which is not a public company or subsidiary of a public company, and meets both of the following conditions at all times:

- it and its subsidiaries have no more than 30 employees; and
- it and its subsidiaries had annual revenue in the prior financial year of less than 50,000,000 *kyats* in total.

A small company enjoys two special exemptions under the Companies Law.

First, small companies are exempted from holding an annual general meeting (AGM) every year. A small company may pass shareholder resolutions in writing instead of calling and holding an AGM.

Second, small companies are exempted from preparing audited financial statements annually. A small company does not need to prepare audited financial statements and does not need to lodge them with DICA. However, it must maintain proper financial records and accounts to determine the company's true financial position.

These exemptions do not apply for a small company if DICA, the company's shareholders or the company constitution require the company to hold an AGM or prepare audited financial reports.

2.5 FOREIGN COMPANIES

A company registered in Myanmar may have foreign shareholders. If more than 35% of a company's shares are directly or indirectly owned by foreign shareholders, the company will be classified as a "foreign company".

A foreign company is classified based solely on ownership and does not enjoy other privileges or restrictions in the Companies Law. A foreign company is subject to the same legal compliance requirements as other companies under the Companies Law.

A company is required to notify DICA if it becomes a foreign company or ceases to be a foreign company. It must also declare its status as a foreign company in every annual return.

3 OWNERSHIP OF A COMPANY

3.1 ROLE OF SHAREHOLDERS AND DIRECTORS

Shareholders of a company (also called “members” of a company in the Companies Law) collectively own the company. Shareholders are investors in the company who pay money to the company in return for shares in the company. Shareholders are not involved in managing a company unless they are also directors or the company constitution allows them to do so.

A private company must have at least one shareholder and no more than fifty shareholders (excluding employees of the company). A public company must have at least one shareholder and there is no limit on the number of shareholders in the company.

A shareholder can also be a director of a company but does not need to be one. Directors are responsible for managing the company’s affairs. In small companies, it is common for shareholders to be appointed as directors of the company. In larger companies or public companies, a director can be independent from the shareholders and does not need to be a shareholder.

3.2 BECOMING A SHAREHOLDER OF A COMPANY

A person or legal entity can become a shareholder of a company in two ways:

- They can be listed as a member at the time of registration of the company. The name, nationality, date of birth and addresses of all persons and legal entities which have agreed to be members will be listed in the application for registration of a company.
- They can agree to become a member of a registered company by buying shares in the company. The company must disclose to DICA the name, nationality, date of birth and addresses of all persons and legal entities which become shareholders in the company. The company must also notify DICA if there are any changes to its shareholders.

3.3 RIGHTS AND RESPONSIBILITIES OF SHAREHOLDERS

As owners of a company, shareholders have rights and responsibilities set out in the Companies Law and the company’s constitution.

Shareholders of a company own the company, but do not own the company’s assets because the company is a separate legal entity and its assets belong to the company. In addition, shareholders are not personally liable for the company’s debts and liabilities. A shareholder’s only financial obligation is to pay the company any amount unpaid on their shares.

Shares can be fully paid or partially paid. A company may set the terms on which its shares are issued and the rights and restrictions attached to the shares. Shareholders should refer to the company constitution and the terms of issue of their shares to understand the rights and restrictions attached to their shares.

Shareholders are able to vote on the shares they hold at a general meeting of the company. They have the right to receive any dividend or distribution paid by the company. They have the right to an equal share in any surplus assets of the company if the company is wound up (after a company has paid all of its creditors). These rights can all be varied in the company’s constitution.

Shareholders do not have any right to participate in the management of a company’s business or its affairs (for example, filing notice or documents with DICA), unless the company constitution allows them to do so or they are also appointed as directors of the company.

What is a company constitution?

The company constitution is an important document which sets out the rules for how the company is governed, including the rights and obligations of shareholders. Under the Companies Law, the company constitution has legal effect as a contract between the company and its shareholders and is legally binding on all shareholders.

A person who becomes a shareholder of company is taken to have agreed to observe all of the provisions of the company constitution. A breach of the company constitution can have legal consequences. Shareholders should read the company constitution carefully and be familiar with its provisions.

3.4 SHAREHOLDERS' RIGHT TO VOTE

Shareholders can make decisions about the company by voting on shareholder resolutions at general meetings of the company. The right to vote is one of the most important rights of a shareholder in a company.

Shareholders generally have the right to cast 1 vote for every ordinary share they hold at company meetings. Therefore, the number of shares a shareholder holds determines the level of control they have on the company. For example, if a shareholder holds 750 shares out of a total of 1,000 shares issued by a company, that shareholder controls 75% of the votes at a general meeting of the company.

Shareholders can make decisions for the company by voting on a shareholder resolution to:

- change the name of the company;
- alter the constitution of the company;
- appoint or remove directors of the company;
- change the company's share capital, for example by reducing share capital or buying back shares;
- for public companies, sell or dispose the main business of the company or remit any debt due by a director; or
- wind up the company and appoint a liquidator.

Different classes of shares may have different rights to vote on shareholder resolution at general meetings of companies. A company may issue shares with voting rights or without voting rights. Shareholders should carefully read the terms of issue of their shares before becoming a member.

3.5 SHAREHOLDER RESOLUTIONS

Shareholders can make decisions of the company by voting on shareholders resolutions. There are two types of shareholder resolutions under the Companies Law:

- A **special resolution** which must be passed by at least 75% of the votes cast by members entitled to vote on the resolution and who are present at the meeting.
- An **ordinary resolution** which must be passed by a majority (50% or more) of the votes cast by members entitled to vote on the resolution and who are present at the meeting.

The Companies Law requires some shareholder decisions to be approved by an ordinary resolution and other decisions to be approved by a special resolution.

Examples of decisions requiring an ordinary resolution	Examples of decisions requiring a special resolution
<ul style="list-style-type: none"> • Appoint a director or remove a director 	<ul style="list-style-type: none"> • Change of company name
<ul style="list-style-type: none"> • Appoint an auditor 	<ul style="list-style-type: none"> • Change of company constitution
<ul style="list-style-type: none"> • Approve financial reports 	<ul style="list-style-type: none"> • Change of company type
<ul style="list-style-type: none"> • Approve benefits and pay for directors 	<ul style="list-style-type: none"> • Approve share capital reductions or share buy-backs
<ul style="list-style-type: none"> • Any other shareholder resolutions which do not require a special resolution under the law 	<ul style="list-style-type: none"> • Approve issue of preference shares

3.6 MEETINGS OF SHAREHOLDERS (GENERAL MEETINGS)

General meetings of a company are called to present matters for approval by shareholders (by passing shareholder resolutions). Shareholders have a right to receive notices of meetings. At least 21 days' advance notice must be given for general meetings of private companies and 28 days' advance notice must be given for general meetings of public companies.

Company directors have the power to call general meetings. Shareholders who hold at least 10% of the issued shares of the company may also request the directors to call and hold a general meeting.

There are three types of meetings of shareholders under the Companies Law:

- An **annual general meeting (AGM)** which must be held 18 months from the date of incorporation and once every calendar year. At the AGM, the usual proceedings include election of directors of the company (by shareholders) and if a company is required to prepared an annual financial report, directors' report and auditor's report, they must also be presented to the shareholders at the AGM.
- A **special general meeting** which is any other meeting of the members of a company (other than an AGM).
- A **statutory meeting** which only public companies and companies limited by guarantee with share capital are required to call within 6 months and not less than 28 days from the date of incorporation.

What are written resolutions?

A company with a single shareholder does not need to hold general meetings and may pass a shareholder resolution by recording it in writing and signing it.

Also, a private company may pass a shareholder resolution without holding a general meeting if all members sign a copy of the resolution. The written resolution is considered to be passed (approved) when all members have signed the resolution.

3.7 OTHER RIGHTS OF SHAREHOLDERS

❖ Inspection of register of members

Shareholders may inspect the register of members of the company free of charge and obtain copies of them. The register of members is usually held at the company's registered office or the principal place of business. The register of members contains the details of each shareholder, the number of shares held and the amount paid on the shares.

❖ Inspection of other registers maintained by the company

In addition, shareholders may inspect free of charge any other registers that the company is required by law to maintain. This includes the register of directors and secretary maintained by a company which contains details of each director and secretary of the company, including any interests declared by a director and any benefits provided to a director by the company.

Shareholders may also inspect other registers of the company (required by law) such as the register of mortgages and charges on the property of the company, which contains details of the property mortgaged and the names of parties to whom the property has been mortgaged.

❖ Inspection of shareholder resolutions and meeting minutes

A company must keep a written record of all shareholder resolutions and minutes of general meetings. Shareholders are entitled to inspect the minute books of a company and shareholder resolutions free of charge and may also request copies of the resolutions or minutes.

❖ Requesting a copy of the company constitution

Shareholders may request a copy of the company constitution from a company and the company must send to the shareholder within 14 days of the request.

❖ Receipt of financial statements of the company

A company which is required to prepare audited financial statements must send them to all of its shareholders and a copy of the financial statements must also be open for inspection at the registered office of the company at least 21 days before the annual general meeting.

❖ Receipt of dividends

Some companies pay dividends to their shareholders and if so, shareholders have a right to receive those dividends based on terms of issue of their shares. The company's constitution may also set out the terms of payment of dividends to shareholders.

What are the differences between shareholders (members) and directors?

Shareholders of a company collectively own the company as investors in the company. Directors, on the other hand, are responsible for the management of the company's business.

A director must act in the best interests of the company even if this may conflict with their own personal interests. Shareholders are generally free to act in their own interests.

Directors are also subject to various duties under the law, including the duty to disclose material personal interests, not to improperly use position or information and to avoid reckless trading. Shareholders are not subject to any such duties and are only required to pay any unpaid amount owing on their shares.

Every company must have at least one shareholder and the minimum number of directors required by the law (which is one director for a private company and at least three directors for a public company).

A director can also be a shareholder of a company, which is common for smaller companies. Smaller companies can sometimes have only one director who is also the sole shareholder. Where the director is not a shareholder in the company, the director's role is to manage or control the affairs of the company without having any ownership of the company.

4 MANAGING A COMPANY

4.1 WHAT IS A DIRECTOR?

A director is the person appointed or elected to manage the company's business and provide it with direction. Directors must manage the company's business in accordance with the company's constitution and applicable laws, including the Companies Law.

Directors are responsible for managing the company's day-to-day business and may, or may not, be shareholders. Directors owe duties to the company, to its shareholders, and to others dealing with the company. Directors must act honestly in what they believe to be the best interests of the company and with such care as may reasonably be expected of them in all circumstances.

Responsibilities of directors include determining and implementing policies and making decisions, preparing and filing documents with DICA or other government agencies, calling general meetings, including an annual meeting of shareholders, and maintaining and keeping records of the company required by law. Note that directors also have many legal duties and responsibilities under the Companies Law and the company constitution and directors should ensure they are familiar with them.

4.2 REQUIREMENTS FOR DIRECTORS

Under the Companies Law, a private company must have at least one director and a public company must have at least three directors (one of whom must be a Myanmar citizen). The maximum number of directors that a company can have will usually be stated in the company constitution. The company may also increase or reduce the maximum number of directors stated in the company's constitution by passing a special resolution to change the company constitution.

At least one director of every company must be ordinarily resident in Myanmar. The ordinarily resident director may be a permanent resident of Myanmar or be resident in the country for at least 183 days in every 12-month period.

The Companies Law sets out the minimum qualifications for directors of companies:

- A director must be a natural person who is at least 18 years old.
- A director must be of sound mind.
- A director must not be a person who has been disqualified from acting as a director under the Companies Law or any other applicable law.
- A director must not be an undischarged bankrupt.

A company may set out additional qualifications of directors in the company constitution, such as a requirement to hold shares in the company.

4.3 APPOINTMENT OF DIRECTORS

A company's first directors are usually chosen by the persons who incorporate the company and will be named in the application for registration of the company. Other directors are generally appointed by an ordinary resolution of shareholders at a general meeting or by written resolution. The director of a company who is also a single shareholder can appoint another director by written resolution.

Every director of must provide consent in writing to be appointed as a director of the company prior to being appointed.

The directors of a company may also appoint a managing director if they wish and the managing director may be authorised to exercise any of the powers that the directors can exercise. It is not compulsory under the law for a company to appoint a managing director.

A director can, with the approval of the other directors, appoint an alternate director in their place for a temporary period if they cannot attend meetings or are unavailable. A written notice of the appointment of an alternate director must be given to the company.

The directors of a company may also appoint a company secretary but is not required to do so. A company secretary, if appointed, must be a person who is at least 18 years of age.

4.4 RESIGNATION, RETIREMENT OR REMOVAL OF DIRECTORS

A director may resign or retire at any time by tendering his resignation in writing. Since a director's consent is required before he can be appointed as a director, he cannot be forced to continue to serve as a director of the company if he wishes to resign or retire.

The shareholders of a company may remove any director by passing an ordinary resolution and may also appoint another director by ordinary resolution. A director who is removed by shareholders cannot be reappointed by the board of directors.

For public companies, unless otherwise provided in the company constitution, at each annual general meeting one-third of the directors must retire from their position and may seek re-election as a director.

Under the Companies Law, a director will be removed from the position of director if:

- the director fails to hold the minimum number of shares that directors are required to hold under the company constitution (if any);
- the director is found to be of unsound mind by a court or is adjudged bankrupt or an insolvent;
- the director fails to pay any money for the shares held by him within six months from the date of the call;
- the director is absent from three consecutive meetings of the directors, or from all meetings of directors in a three-month period, without approval from the board of directors or without appointing an alternate director; or
- the director ceases to hold or meet any of the qualifications required for the position of director set out in the Companies Law or the company constitution.

In addition to these grounds, a company's constitution may set out additional grounds on which a director may be compulsorily removed from his position.

4.5 POWERS OF DIRECTORS

Directors of a company are responsible for managing the company and the company's business. A director makes decisions regarding the business of the company and must guide and monitor the performance of the company.

The Companies Law allows directors to exercise all the powers of the company in carrying on business. This includes the power of the company to borrow money, issue shares, enter into contracts, bring legal proceedings, hire employees, and grant security over the company's assets.

Directors can exercise their powers by passing a resolution of directors, also commonly known as a board of directors' resolution. Directors' resolutions are required under the Companies Law for

certain matters such as issuing new shares of the company, determining the amount of dividend to be paid to shareholders, or approving share transfers (if required by the company constitution).

4.6 LEGAL DUTIES OF DIRECTORS

Given the wide powers that the directors enjoy over the affairs of the company, the Companies Law imposes many legal duties on directors to ensure that they act properly and in the best interests of the company.

Duty to act with care and diligence

Duty to act in good faith in the company's best interest

Duty not to improperly use position or information

Duty to comply with the law and company constitution

Duty to avoid reckless trading

Duty not to incur obligations unless company can perform

Duty to disclose material personal interest

How can directors comply with their duties under the Companies Law?

To comply with these duties, the directors must ensure that they:

- ✓ act honestly and carefully in dealing with the company and on its behalf with others;
- ✓ give the interests of the company, its shareholders and its creditors top priority, which includes acting in the company's best interests (even if this may not be in the director's own personal interests);
- ✓ understand their legal obligations under the Companies Law and the company constitution and comply with them in making their decisions;
- ✓ are kept informed about the company's financial position and performance, ensuring the company can pay its debts on time, keeps proper financial records and does not take on obligations that it cannot satisfy;
- ✓ do not allow or agree for the business to be carried out in a way likely to create a substantial risk of serious loss to the company's creditors;
- ✓ use any information received through their position properly and not to the detriment of the company; and

- ✓ avoid conflicts of interest and disclose any material personal interest which may influence how they vote on a board resolution.

4.7 FAILURE TO COMPLY WITH DIRECTORS DUTIES AND LEGAL REQUIREMENTS

Directors of a company must ensure that they comply with their duties under the Companies Law and in addition, must also ensure that the company complies with its legal obligations. The Companies Law imposes specific penalties on directors if a company fails to comply with the Companies Law.

If there is a breach of directors' duties under the Companies Law, every director (and any other person) who is a party to the default is liable to a fine of 10,000,000 kyats. Every director who is knowingly and wilfully a party to the default may also be:

- subject to additional penalty if the default has involved dishonesty; and
- disqualified from acting as a director of a company for a period of time.

By way of example, if a company does not comply with the requirements set out in the Companies Law for the payment of dividends, every director who knowingly and wilfully permits the default may be liable to a fine of 500,000 kyats. If the company becomes insolvent after the payment of a dividend, every director who knowingly and wilfully permitted the payment of the dividend in default may be sued by creditors of the company to recover money.

Accordingly, directors should ensure that they understand the legal requirements on companies under the Companies Law, even if the company appoints an agent to handle the company's reporting and filing requirements.

4.8 OTHER OFFICERS

In addition to directors, the Companies Law also imposes legal obligations on other "officers" of the company. An officer of a company includes a person who makes or participates in making decisions that affect the whole or significant part of the business of the company or has the capacity to significantly affect the company's finances. This may include persons in senior management who are not officially appointed to the board of directors. Officers can also be liable if the company does not comply with its obligations under the law.

WHAT DOES BEING A DIRECTOR OF A COMPANY INVOLVE?

A director of a company is a person who is responsible for managing the company's business affairs.

Every company must have at least one director. Larger companies may have many directors who collectively manage the business of the company. They are often referred to as a "board of directors".

Role of a director

A director's job is to manage the business affairs of a company. In addition to the Companies Law, your company's constitution may set out a director's powers and functions. The key responsibility of a director is to understand what your company is doing at all times.

You need to consider how any proposed actions will affect the company, especially if it involves large amounts of money. As a director, you should be active and engaged in directors' meetings. You should also question managers and staff about areas of the business if necessary and get professional advice if you need more information to make an informed decision.

Your legal obligations

As a director or officeholder, your key duties include:

- being honest and careful in all your decisions regarding the company;
- understanding what your company is doing and its financial position;
- making sure your company can pay its debts on time;
- ensuring your company keeps proper financial records;
- acting in the best interests of the company and its shareholders and creditors, even if this conflicts with your personal interests.

If you have any personal interests that conflict with your duties as a director, you should disclose these at a directors' meeting.

These rules are contained in the Companies Law as legal duties that are imposed on company directors. The law set out how directors must perform their duties and how they are expected to manage the affairs of the company. As a company officer, you are also responsible for making sure that the company meets all its obligations under the Companies Law.

You should avoid situations where someone offers to appoint you as a director or secretary on the promise that 'you won't have to do anything' and 'just sign here'. You could be exposing yourself to legal liabilities if you accept such a role. You should only agree to become a company director or secretary if you understand your legal duties and are willing and able to put in the effort.

Your responsibilities to the company

A company is a separate legal entity – that is, it exists under the law in its own right and can do nearly all of the things that a normal person can do such as enter into contracts, borrow money, and buy and sell assets.

If you become a director of a company, you must remember that:

- the company owns the assets of the business;
- the company is generally responsible for repaying company debts;
- any money invested in the company (e.g. by owners or investors buying shares in the company or through loans to the company) belongs to the company and must be used for a proper purpose.

You cannot treat what the company owns such as company property, assets and funds as if they are your own. They do not belong to you, they belong to the company.

You must always exercise your powers and discharge your duty in good faith and in the best interest of the company. This includes considering the likely long-term consequences of any board decision, including its impact on the company's employees, business relationships with customers and suppliers, the environment and company's reputation, as well as the need to act fairly as between members of the company.

Shadow directors

Under some circumstances, even if you are not formally appointed as a director of a company, you may still be subject to the same duties and liabilities as a director. For example, if you act in the company's affairs as if you were a director or give instructions to the directors on how they should make decisions, you may be considered a 'shadow director'.

Shadow directors can still be liable for breaches of the laws relating to directors' duties, even though they were never formally appointed as a director of the company.

5 REQUIREMENTS FOR COMPANIES UNDER THE COMPANIES LAW

The Companies Law contains detailed legal requirements for companies relating to their affairs and governance matters. This chapter sets out some of the most common requirements for companies.

5.1 HAVE A REGISTERED OFFICE AND USE THE COMPANY NAME

Every company must have a registered office in Myanmar to which all communications and notices to the company can be sent.¹ If the company does not operate its business at its registered office address, it must obtain the consent of the occupier of the premises to use the premise as the company's registered office.

A company must also properly display the company's name²:

- at every office or place at which the company carries on business in a noticeable position in easily legible characters;
- in all notices, advertisements and other official publications of the company, and in all invoices, receipts and public documents of the company, including documents lodged with DICA; and
- on the company seal (if it has one).

5.2 MAINTAIN COMPANY REGISTERS AND RECORDS

Every company is required to keep and maintain up-to-date company registers and records under the Companies Law, in addition to filing documents with DICA.

The registers and records that a company must keep by law include:

❖ Register of members³

This register must contain the name, address and nationality of each shareholder of the company, the number and class of shares held by each shareholder, the date each person was entered in the register as a shareholder and the date on which any person ceased to be a shareholder. The register must also include the amount paid on the shares of each shareholder, and whether they are fully paid and any amount unpaid on the shares. (Note: If the company has issued options, debentures or others securities, it must also maintain a register of such holders.)

❖ Register of directors and secretary⁴

This register must contain each director's name, date of birth, residential address, nationality and business occupation, and any other directorships held. The register must also include any material personal interests declared by a director and any benefits provided to a director by the company (such as remuneration or loans). In addition, the register must also contain the name, date of birth, residential address, nationality and business occupation, and any other directorships held, of the company secretary or alternate directors (if any).

❖ Minutes of meetings and resolutions⁵

¹ Section 141.

² Section 143.

³ Section 90.

⁴ Section 189.

A company must keep the minutes of all shareholder meetings and resolutions passed at those meetings, as well as the minutes of all directors' meetings and resolutions passed at those meetings. The minutes and resolutions must be recorded within 21 days of the date of the meeting or the resolution and must be signed by the chairman or other authorised director.

❖ **Company constitution⁶**

A company is required to keep a copy of the company constitution. Company constitutions are important legal documents which are legally binding on the shareholders and the company and may only be amended by a special resolution of shareholders. Every amendment to the company constitution must be included in a company constitution issued by the company.

❖ **Register of mortgages and charges over company property⁷**

The company must also maintain a register of mortgages and charges created over the company property (if any). The register must include details of the property mortgaged or charged, amount of the mortgage or charge, and the names of the mortgagees or chargees.

These registers and records of the company must be kept at the registered office or principal place of business of the company, or the office of a person appointed to maintain the company's registers.⁸

NOTE | All companies are required by the Companies Law to maintain their own registers and records. The information maintained by DICA about the company's shareholders, directors and other details does **not** replace the requirement for a company to maintain its own registers and records. Penalties apply if a company fails to maintain the registers required by law.

5.3 SUBMIT AN ANNUAL RETURN EACH YEAR

Every company must file an annual return with DICA within 2 months from its incorporation and once every year (no later than 1 month after the anniversary of its incorporation) under the Companies Law.⁹

Companies will receive an electronic reminder from DICA when their annual return is due. If an annual return is not filed by the due date, the company's registration may be suspended and the company may be struck off from the DICA's registry if it has been suspended for more than six months.¹⁰

5.4 HOLD GENERAL MEETINGS OF SHAREHOLDERS

Every company which does not qualify as a "small company" must hold an annual general meeting (AGM) of shareholders once a year.¹¹

A company must hold its first AGM within 18 months from the date of its incorporation. After that, it must hold an AGM at least once in every calendar year and no later than 15 months after the previous AGM.

⁵ Section 157.

⁶ Section 23.

⁷ Section 247.

⁸ Section 95.

⁹ Section 97.

¹⁰ Section 430

¹¹ Section 146.

The matters considered at the AGM include the election of directors and the consideration of the annual financial report, directors' report and auditor's report (if the company is required to prepare such reports) and the appointment of an auditor (if required).

In addition to the AGM, a company may hold other meetings of shareholders to decide certain matters (called "special general meetings") such as a change of company name or constitution.

Every public company and every company limited by guarantee with share capital must, not less than 28 days and not more than six months from the date of company's incorporation, hold a general meeting of shareholders, which is called the "statutory meeting".¹² The company must also prepare a "statutory report" which must be sent to every shareholder at least 21 days before the statutory meeting.

5.5 KEEP FINANCIAL RECORDS AND ACCOUNTS

Every company must maintain up-to-date financial records and accounts that correctly record and explain the company's financial position and performance. Financial records must be maintained so that accurate financial statements of the company can be prepared and audited if required.

Financial records and accounts that every company must maintain include¹³:

- record of sums of money received and spent by the company and information regarding the receipt and expenditure of money by the company;
- records of the sales and purchases of goods and services by the company; and
- list of the assets and liabilities of the company.

Other financial records that companies should maintain include bank statements, payment invoices, receipts, cash records, payments for employees (wages and social security payments), inventory, tax records and other documents needed to explain the methods by which the company's financial reports may be prepared.

These records may be maintained at the registered office of the company or another place the directors consider appropriate and must be open to inspection by all directors of the company.

5.6 PREPARE AUDITED FINANCIAL STATEMENTS (IF REQUIRED)

Within 18 months of incorporation and once every year, every company which does not qualify as a "small company" must prepare and present to a general meeting of shareholders its financial statements (including a balance sheet and a profit and loss account) which have been audited by the company's auditor, together with a copy of the auditor's report.¹⁴

The directors of the company must also prepare and attach a report on the affairs of the company (called the "directors report") including the amount they recommend as payment for dividend.¹⁵

The financial statements prepared by a company must comply with all applicable accounting standards and relevant laws.

Every public company is required to file with DICA a copy of its financial statements as presented at the general meeting together with its annual return.¹⁶

¹² Section 148.

¹³ Section 258.

¹⁴ Section 260.

¹⁵ Section 261.

5.7 INFORM DICA OF CHANGES TO COMPANY'S DETAILS

DICA maintains an electronic companies registry, Myanmar Companies Online (**MyCO**), which contains all details of companies submitted under the Companies Law.

Every company is required to inform DICA if the company's details change and to ensure that MyCO contains accurate details of the company. For example, a company must inform DICA if the company has moved to a new address, a director has left the company or a new director or secretary has joined the company, or the company has issued new shares.

Please see Chapter 6 for common types of changes that companies must notify DICA and Chapter 8 for information on the MyCO registry maintained by DICA which can be used to notify these changes.

6 NOTIFYING DICA OF CHANGES TO COMPANY DETAILS

A company must notify DICA if there are changes to important details about the company, including changes to:

- the company's registered office address or principal place of business;
- details of directors, secretary or alternate directors of the company;
- details of the shareholders of the company;
- the share capital of the company; and
- the constitution of the company.

Changes must be notified to DICA using prescribed forms which are available on the MyCO registry. The company must pay any prescribed filing fees when lodging certain documents. Late fees may also apply if a company fails to file a document within the time specified in the law.

6.1 CHANGES TO DIRECTORS

Any changes in the directors of a company such as the appointment of a new director or resignation of a director must be notified to DICA. In addition, if there are any changes to the details of an existing director such as a change in their residential address, DICA must also be notified.

A company must also inform DICA if there are any changes to its company secretary or if any alternate directors have been appointed (or removed).

NOTE | These changes must be notified to DICA within 28 days of the change using **Form D-1** | Particulars of directors and secretary.

6.2 CHANGES TO SHAREHOLDERS

Any changes to the shareholders of a company, their details or their shareholdings must be reflected in the company's register of members and notified to DICA.

For example, if a shareholder transfers their shares to another person, buys more shares or increases the amount paid on their shares, DICA must be notified. Changes to shareholders and shareholding details can also result from the company issuing more shares or cancelling shares and must be notified to DICA.

Public companies are only required to inform DICA if there is a change in the top 50 shareholders of the company.

NOTE | These changes must be notified to DICA within 21 days of the change using **Form C-3** | Change to share capital or register of members.

6.3 CHANGES TO SHARE CAPITAL

A company must inform DICA when it issues new shares or makes other changes to its share capital such as a reduction of capital, a buy-back of shares or consolidation of shares.

The Companies Law sets out specific procedures that the company must follow when making changes to its share capital. Certain changes to share capital such as a reduction of capital require other documents to be filed with DICA.

NOTE | These changes must be notified to DICA within 21 days of the change using **Form C-3** | Change to share capital or register of members.

6.4 CHANGE OF COMPANY NAME

A company may change its name by passing a special resolution of shareholders, provided that the new name is available and acceptable for registration. DICA must be notified of any change to a company's name.

A new name is available unless the name is identical to the name of another registered company or entity, or is not acceptable for registration. A name is not acceptable if it includes the word 'Government' or other restricted words, or where the name may suggest a misleading connection with the government or may be offensive to the public.

If the name is available and acceptable, DICA will change the company's name on the MyCO registry and issue a new company registration certificate. The new name is only legally effective from that date. If a proposed new name is not available or acceptable, the company will be notified by DICA and will need to approve another name.

NOTE | A change of company name must be notified to DICA within 28 days of passing the special resolution using **Form C-2** | Notice of change of company name.

6.5 CHANGES TO COMPANY CONSTITUTION

A company may amend its constitution or adopt a new company constitution by passing a special resolution of shareholders.

A change to the company's constitution must be notified to DICA and a copy of the amended or new constitution must also be filed with DICA. An amendment to a company's constitution is not legally effective until it is registered with DICA in accordance with the Companies Law.

NOTE | A change of company constitution must be notified to DICA within 28 days of passing the special resolution using **Form C-1** | Notice of alteration of constitution.

6.6 CHANGE OF REGISTERED OFFICE (OR PRINCIPAL PLACE OF BUSINESS)

A company must notify DICA if it changes its registered office address **prior** to the change in the address. The advance notice is required by law to ensure that the company can be reached at the address as shown in the MyCO registry.

A company must also notify DICA if there is any change to its principal place of business.

NOTE | A change of registered office or principal place of business must be notified to DICA using **Form C-4** | Notice of change of registered office or principal place of business.

7 WINDING-UP A COMPANY

A company can be closed down by a process of winding up, which is also known as liquidation. In a winding up, a liquidator is appointed to sell the company's assets. These proceeds from the sale are then distributed among the company's creditors and any remaining assets are returned to the members.

There are two main types of winding up:

- **Voluntary winding up** which may be a members' voluntary winding up or a creditors' voluntary winding up; or
- **Compulsory winding up** on grounds of insolvency or other grounds.

The Companies Law sets out specific procedures for winding up. Please seek professional advice if your company requires assistance with winding up.

7.1 VOLUNTARY WINDING UP

A company can be wound up voluntarily either by way of a members' or creditors' voluntary winding up. Both types of voluntary winding up need to be initiated by a special resolution passed by the company's members at a general meeting.

❖ Members' Voluntary Winding Up

A members' voluntary winding up involves the liquidation of a company that is still solvent.

The process is initiated when the company has stopped operating its business and a general meeting of members is held to approve a special resolution to voluntarily wind up the company. Before the members' meeting is held, the directors of the company must declare by an affidavit that they have made a full inquiry into the affairs of the company and are of the opinion that the company will be able to pay its debts in full within 3 years after the commencement of the winding up. The directors' declaration must be supported by an auditor's report and be filed with DICA prior to the notice of general meeting being sent to members.

The members must then pass a special resolution in a general meeting for the company to be wound up voluntarily. Within 10 days of the resolution being passed, the company must publish a notice in the Gazette and a national newspaper that a special resolution has been passed to voluntarily wind up the company.

A liquidator must be appointed to wind up the affairs of the company and file the required notifications with DICA in accordance with the Companies Law. Once a liquidator is appointed, the directors will no longer have any authority to run the company.

❖ Creditors' Voluntary Winding up

The company may be wound up by a creditors' voluntary winding up if its directors believe that the company cannot continue to operate due to its liabilities and should be wound up. Unlike a members' voluntary winding up, a creditors' winding up is the liquidation of an insolvent company.

Where a company is insolvent, the members of the company must at a general meeting pass a special resolution for it to be wound up voluntarily. A meeting of creditors must also be called and held on the same day or the next day. A notice of the creditors' meeting must be published in the Gazette and a national newspaper. At the creditors' meeting, the directors must report on the affairs of the company, together with a list of the creditors of the company and the estimated amount of their claims.

If a special resolution is passed by the members for a voluntary winding up of the company, the company must publish a notice in the Gazette and a national newspaper within 10 days of the resolution being passed.

A liquidator will then be appointed to wind up its affairs and file the required notifications with DICA in accordance with the Companies Law. Once a liquidator is appointed, the directors will no longer have any authority to run the company.

7.2 COMPULSORY WINDING UP

A company may be wound up by an order of the Court under certain circumstances. Some common grounds where a company may be wound up by Court order are as follows:

- the company has not started business within 1 year from its incorporation or has suspended its business for a whole year;
- the company is deemed to be insolvent and is unable to pay its debts;
- the company is a public company and has failed to file a statutory report or hold a statutory meeting as required by law; or
- the conduct of the company's affairs is not in the interests of the members as a whole, or is oppressive, unfairly prejudicial or discriminatory to the members.

One of the main grounds on which a company may be wound up by order of Court is where the company is insolvent. A company is deemed to be insolvent when the company is unable to pay all its debts when they become due and payable as set out in the Companies Law.

An application for winding up of a company by the Court may be made by a creditor, member, the company itself or the Registrar in accordance with the law. The Court may then appoint a liquidator to wind up the company.

7.3 STRIKING OFF DEFUNCT COMPANIES

The Registrar (DICA) has powers under the Companies Law to strike off the name of a company from the registry in certain circumstances. A company which has been struck off the registry cannot continue conducting business.

The grounds for striking off a company includes where the company is not carrying on business following notices of inquiry by the Registrar or where the company has been suspended from the registry for more than 6 months for failure to submit an annual return or for submitting a document which contains false or fraudulent information.

8 MYANMAR COMPANIES ONLINE (MYCO) REGISTRY

The MyCO registry is established and maintained by DICA as a public registry of all companies and entities registered under the Companies Law. The information on the MyCO registry is maintained electronically and is publicly accessible 24 hours a day.

All forms and documents required to be filed with the Registrar under the Companies Law can be submitted by a representative of the company or a third party on behalf of the company in the following ways:

- **Online** on the MyCO registry at www.myco.dica.gov.mm; or
- **In person** at a DICA office to be uploaded electronically on the MyCO registry.

Directors of a company (or the company secretary if the company has appointed one) are legally responsible for filing documents and for the accuracy of the information filed with the Registrar. Directors are also legally responsible even if they have appointed a third party (such as an accountant, agent, or lawyer) to lodge documents on behalf of the company.

8.1 USING THE MYCO REGISTRY

To file documents on behalf a company or use other functions of the MyCO registry, a person must first create a user account using an email address. User accounts may be created as a personal account (with an individual user) or a business account (with multiple users)

To file documents on behalf of a company on the MyCO registry, a person must also have “company authority” from the company. The person who initially registers a company (or re-registers a company) will be automatically granted a company authority. Directors and secretary (if any) of a company who have provided their email addresses to DICA will also be automatically granted company authority. All other persons will be required to submit a written letter from the company (one time only) for company authority in order to file documents on behalf of a company.

8.2 LODGEMENT OF FORMS AND DOCUMENTS

Company information required by law to be filed with DICA must be submitted using the prescribed forms which are available on the MyCO registry. A filing will be rejected if the applicable prescribed form is not used. Documents are only considered to have been filed when they are received and accepted by DICA.

8.3 FILING FEES AND LATE FEES

There are filing fees to lodge certain forms and documents with DICA. In addition, late fees will also be charged if documents are not submitted within the time periods set out in the law. The prescribed filings fees and late fees are set out on the MyCO registry.

Fees may be paid online on the MyCO registry or at a DICA office. A form or document filed by a company will not be accepted if it is not accompanied by the applicable filing fee or late fee.

8.4 PURCHASING INFORMATION ABOUT COMPANIES

A free public search of general company details is available on the MyCO registry. Additional details of registered companies and entities maintained by DICA on the MyCO registry can also be purchased. Information that can be purchased includes company extracts, copies of company constitutions and copies of certificates. Fees for purchasing information are set out on the MyCO registry.

CONCLUSION

DICA has established the MyCO companies registry to provide company registration and filing services from the commencement of the Myanmar Companies Law 2017. DICA may be contacted at the following contact details if further information is required in relation to company searches and filings.

Company Affairs Division, Directorate of Investment and Company Administration

Phone-	01 657891
	01658103 Ext: 103, 104, 105
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web-	www.myco.dica.gov.mm

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