



# BRITCHAM BUSINESS CRITICAL

Myanmar's New Companies Law:  
What you need to know to get the most out of this key reform

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# **The Myanmar Companies Law 2017: Overview for Investors**

Presentation to British Chamber of Commerce

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# Presentation Outline

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- Context and status
- Key provisions
- Implications for investors

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# Myanmar Companies Law: Context and Status

# Investment climate reform context

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- Myanmar's regulatory environment has come a long way, quickly.
- Investment Law and Rules – a new framework to liberalise the market and promote, incentivise, regulate, implement and protect investments in Myanmar
- Financial Institutions Law – provides the basis for a modernised financial sector, including development of non-bank financing, Fintech and enhanced prudential standards for banks
- Arbitration Law – sound basis for recognition of foreign arbitral awards in Myanmar
- Other commercial laws – Competition, Environmental Management, Anti-Corruption, Consumer Protection, etc
- In process – Secured Transactions Law, Insolvency Law, IP Laws, Labour law reform, Insurance Law

# Companies Law reform process and status

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- 103 year old law modernised in accordance with common law principles, best practice and Myanmar's conditions.
- Addresses issues of corporate flexibility, governance, transparency and certainty
- Drafting commenced 2014
- Extensive stakeholder consultation, awareness raising and policy development.
- Long journey through Government and Parliament
- Passed by Parliament November 2017, approved by President 6 December 2017.
- Commencement date ???

# Reform aims and objectives

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- Creation of a robust and efficient framework for companies
- Modernise the law to align with international practice
- Clarify the law and procedures to provide certainty for business and the basis of a new regulatory approach
- Improve corporate governance
- Improve access to information about companies
- Further open the economy and facilitate investment and economic growth, especially SMEs

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# Myanmar Companies Law: Key Provisions



# Company forms and basic features

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- Companies under the Law having limited liability
  - private
  - Public
- Companies formed under former Acts or overseas companies “doing business” covered by the Law
- Business associations
- Myanmar & foreign companies
  - New 35% threshold
  - No transfer restrictions (with notification of change in status)
  - No Permit to Trade
  - Same entity
- Single shareholder
- Holding and subsidiary companies
- Directors and officers
  - min. one resident director for a private company
  - min. three for a public company with one citizen-resident
  - May have a secretary
  - Authorised officer for an overseas company
  - May have a secretary
- Constitution
  - Replaces M&AA
  - Flexible document under control of shareholders

# Company powers

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- All the powers of a natural person (subject to other applicable laws and constitution)
  - “ultra vires” doctrine abolished
    - no requirement for “objects”
    - no Permit to Trade requirement
- In dealing with a company, people can assume it is acting with full power and authority
  - Directors properly appointed and empowered
  - Documents validly executed if signed as prescribed

# Share capital

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- Flexibility has been introduced
  - Ordinary shares
  - Preference shares and other classes of shares
  - Convertible securities and redeemable securities
  - Options (warrants to be phased out)
  - Can denominate shares in currencies exchangeable in Myanmar
- Authorised capital, par value and share premium concepts removed
- Methodology added for valuing “in kind” capital contributions
  - Directors’ must resolve it is fair and reasonable and not less than amount to be credited as paid up
  - Prudent to obtain a valuation
- Pre-emptive rights only if provided in Constitution

# Dividends

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- Conditions for payment clarified
  - must satisfy “solvency test” after payment
    - can pay debts as and when they fall due
    - assets exceed liabilities
    - fair and reasonable to shareholders as a whole
    - not prejudicial to ability to pay creditors
- Determined by Directors
  - potential liability on insolvency
- May be paid in cash, shares or transfer of assets

# Transactions affecting share capital

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- Flexibility introduced to allow for efficient capital management
  - capital reductions
  - share buy-backs
- Court approval not required
- Strong protections for shareholders and creditors
  - fair and reasonable
  - not prejudicial to ability to pay creditors
  - “solvency test” and director liability
  - full disclosure and shareholder approval
  - DICA must approve disclosures

# Directors' powers and duties

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- Power to manage the business of the company
- May delegate to Managing Director and Committees
- Managing Agent concept to be phased out
- Duty of care and diligence
  - “business judgement” rule
- Duty of good faith
- Duty not to misuse position or information; disclose interests
- Duty not to engage in reckless trading
- Duty not to incur obligations unless company can perform
- Reliance on delegates and experts and others permitted but must be reasonable
- May be insured and indemnified (but not for liability to company, conduct in bad faith or wilful breach of duty)
- Disqualification, fine, compensation order, imprisonment

# Shareholder rights and remedies

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- Governance provisions add clear and significant protections for shareholders
- Members can appoint and remove directors, seek to put resolutions, seek to call meetings
- Must approve transactions affecting share capital and relevant related party transactions
- May institute “derivative actions” on behalf of company
- May apply to court for injunctions
- May apply for orders if company conduct not in best interest of members as a whole or discriminates against certain members

# Charges and other security

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- Companies may grant mortgages, charges and other securities over their assets and undertaking
- Clarification that charges, mortgages and other security interests will be registered by DICA
- Clarification that grant of a charge does not “transfer an interest” in immovable property so is registrable at Office of Registration of Deeds and Assurances even if granted to a foreign investor



# Registrar's role and powers

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- DICA continues to be the principal regulator, but shouldn't be a gatekeeper
  - handles incorporations
  - maintains the register (which must be open to inspection)
    - On-line registry and re-registration coming
  - issues guidance
  - monitors compliance
  - takes action
- Power to approve specific matters (eg explanatory memoranda for a share capital transaction)
- Power to issue penalty notices, undertake investigations and bring proceedings, and may require persons to assist in prosecutions
- Decisions may be appealed to the Minister
- Provision made for formation of specialist courts and tribunals

# Transitional provisions

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- Existing companies and current processes will continue but be brought under new law
- “Objects” clauses to be deemed removed at end of 12 month transition period unless refreshed
- Removal of Permit to Trade requirement has immediate effect on commencement of Law
- Existing Managing Agent appointments continue until end of term
- Existing rights and liabilities under MCA continue
- Further transitional provisions, regulations and any other matter to be “prescribed” under the new Law may be issued by the Minister.

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# Myanmar Companies Law: Implications for Investors

# Opportunities under the new laws

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- Myanmar has a universal set of investor rights and protections, a more open economy and a clearer and more comprehensive regulatory framework for business
- New “Myanmar Company” definition and removal of company objects and PTT opens new investment opportunities (restricted sectors, land, listed securities)
- Reforms to shareholding and share capital rules offer fundraising and restructuring opportunities, especially for Myanmar companies
- Reforms to financial institutions, land rights and security rules improve conditions for debt financing
- Corporate governance regime will ensure better corporate performance
- Changes to registration simplify administration and provide transparency
- Realising these opportunities will require significant structuring, planning, engagement with regulators and detailed knowledge of the new laws

# Contacts

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