

THE NEW COMPANIES LAW

Effective on 1st August 2018

- *Audier & Partners* -
Law Firm
A&P

Introduction

- ▣ Myanmar Companies Law (“MCL”)
 - Adopted the 6th December 2017
 - Repeal the Myanmar Companies Act (“MCA”)
 - Enter into force the 1st August 2018

- ▣ Purposes
 - Modernize and clarify the Myanmar law
 - International investments in Myanmar

I. The company incorporation

A) The new incorporation document

UNDER MCA

▣ MoA

+

AoA

UNDER MCL

▣ Constitution



Creation of the company

→ Penalties if information required are not mentioned

•The incorporation (1)

The registration

- ▣ Registration online on the new website “ MyCO” (by DICA) in 2 languages
 - Fees
 - No witness anymore
 - Form
 - Main information are public and available online / Details = 10,000 kyats per company

•The Incorporation (2)

- ▣ The removal of company objectives
 - Distinction of activities which can be practiced depend on the shareholders of the company
 - Under MCA :



- Under MCL: Objective not mentioned (just keywords)

Consequences:

- No document required mentions the activity objectives
- Agreement of ministries not required anymore
- No control before incorporation

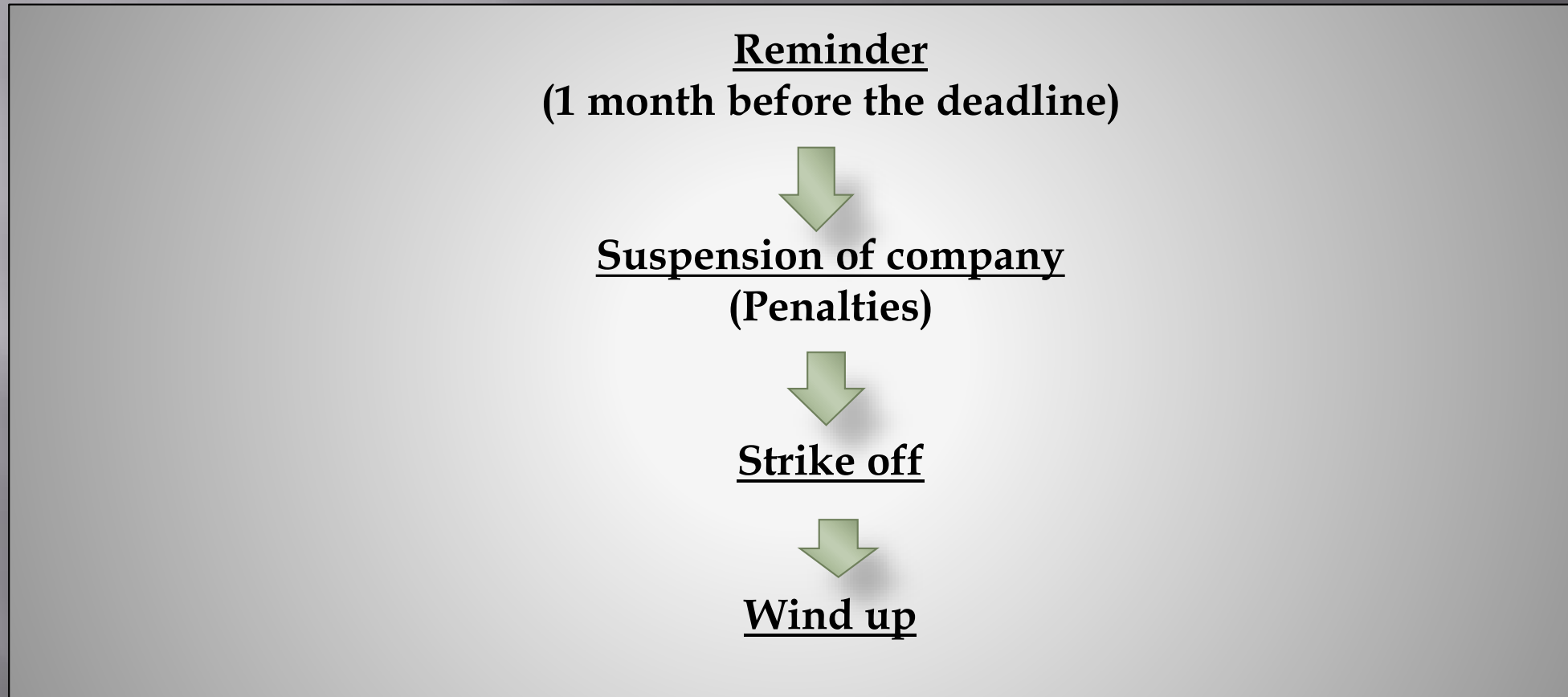
•The re-registration (1)

- ▣ Re-registration within the transition period
 - For existing companies
 - 6 months (= 31st January 2019)
 - No fees required
 - Mention to keep the same object by passing a special resolution
 - Within 12 months to change their object

- ▣ License (?)

The re-registration (2)

- In case of non-compliance



•The registration of overseas corporation clarified

- ▣ Under the MCA= Abilities for foreign-incorporated entities to register to “carry on business” with the DICA
- ▣ Under the MCL = Registration required for all overseas incorporations
 - When an isolated transaction cannot be terminated in a month.
 - Better understanding of what is to “carry on business”
 - Uncertainty on sanction

Modification on MYCO

Forms

- Directors
- Secretary
- Capital
- Scope of activity
- Transfer of Shares
- Etc.

Keep your originals

•Permit to trade

- ▣ Required under the MCA
- ▣ **Abolished** by the MCL
 - ➔ No more Certification of Registration Document
- ▣ Consequences:
 - ➔ Simplify the administrative procedure
 - ➔ Expedite the incorporation process
- ▣ No more form 6 and 26 (MyCO)

•Payment

- ▣ Possibility to pay online by credit card
 - Often no detention of a company credit card allowed by bank

- ▣ By deposit:
 - to DICA

• Authorized capital and par value

- ▣ Required under the MCA
 - Authorized capital

- ▣ Abolished by the MCL
 - In the constitution?

 - Consequences:
 - Administrative procedure easier
 - Companies more flexible
 - Capital raisings facilitated

II. The shareholders

• Identification of a local company up to 35% foreign shareholding

▣ Under the MCA:

1 foreign share = Foreign company

▣ Under the MCL:

Up to 35% of foreign shares = Local company

▣ Warning : Ministries notification

Consequences:

- Local activities opened to foreign shareholders (i.e trading , insurance services)
- Public Myanmar companies opened to foreign investors

•Reduction of the minimum of shareholders to one

- ▣ 2 shareholders required by the current Law
 - Establishment more difficult

- ▣ MCL Only 1 shareholder required
 - In line with international standards
 - Wholly-owned subsidiaries
 - 100% owned by one company

•Minority rights

- ▣ An answer to the “oppressive conduct” , unfairly prejudicial, unfairly discriminatory = right to sue
- ▣ A company becomes a party of the process = right of the shareholder to intervene
- ▣ Limit = obstruction and frivolous lawsuit

•The shareholders rights

- ▣ The pre-emptive rights:
 - MCA Principle = Allows the purchase of shares in proportion to the existing shareholding

 - MCL= No pre-emptive right principle = Needs to appear in the constitution

- ▣ Different classes of shares permitted : preferential or restricted rights, voting rights, option to acquire shares, ...

•Dividends

- ▣ Payable in cash, shares, options or assets

- ▣ requirements :
 - Solvency test to satisfy
 - Fair and reasonable distribution of the dividends
 - No material prejudice of the company's creditors

•Removal of the Court approval for capital reduction

- ▣ Under the MCA : The Court approval is required
- ▣ Under the MCL : The DICA approval is required (28 days)
+ newspaper publication

•Exemptions for small companies

- ▣ Definition:
 - No more than 30 employees
 - Less than 50,000,000 Kyats of annual revenue for it and its subsidiaries

- ▣ Special derogations:
 - Annual general meeting
 - File annual balance sheet, director's report, financial statement

III. Codification of the Director's rights and duties

•The Appointment of Directors

- ▣ Appointment:
 - ➔ first in the application for incorporation
 - ➔ By members
 - ➔ By director (if confirmed)

- ▣ Removal of the managing agent = considered as a director of the company in MCL

- ▣ Possibility to appoint a secretary and determine its powers and duties

•The Director's residence and number

- ▣ Under MCA = At least 2 directors required without consideration of their country of residence
- ▣ Under the MCL =

Private companies

- At least 1 Director
- Ordinarily resident (= present at least 183 days in Myanmar)
- if foreign company = 1 authorised officer

Public companies

- At least 3 Directors
- 1 Myanmar citizen ordinarily resident

•Deadline

- ▣ For existing companies :
 - Appointment of a resident director within 12 months of the commencement of the MCL (from the 1st August 2018 to 31 July 2019)

- ▣ For new companies = date of their registration

•Powers and liability

- ▣ Depending on the structure of the company:
 - 1) board of directors
 - 2) one director
- ▣ **Director's liability cannot be removed** through contract,
- ▣ Insurance for breach cannot be paid by company

•Duties of Directors

- ▣ **Care and diligence** = compared to a reasonable person in the same situation
- ▣ In **good faith** and in the **best interest** of the company and **for a proper purpose** = in the interest of the company or of the shareholders
- ▣ **Duty to disclose certain interest**



Guide of Directors online on the DICA website



Penalties apply if duties are not respected

Conclusion

- ▣ The purpose of the liberalization of Myanmar is pursued
- ▣ Some points will be clarified with time
- ▣ New notification to be enacted to complete the MCL
- ▣ Special policies/notification of the ministries give exceptions

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