



**Dear Readers,**

Welcome to a new edition of our newsletter.

**1. Re-registration of existing companies, branches and rep offices under the new Companies Law**

DICA has always maintained that the new Companies Law would go live on 1 August 2018, coinciding with the start of an electronic registry, and, judging by recent publications on DICA's homepage, it appears that things are on track.

Recently, DICA published drafts of (i) "Myanmar Companies (Electronic Registry System and Miscellaneous Matters) Regulations 2018 (<https://tinyurl.com/yb43mojg>), (ii) forms for the re-registration of existing companies and "overseas corporations" (i.e., branches and rep offices) - <https://tinyurl.com/y7lxek32> - and (iii) forms for the registration of new companies and overseas corporations (<https://tinyurl.com/y7shbeg6>).

Concerning the **re-registration of existing companies and branches/rep offices**, we think that the **following is of note**:

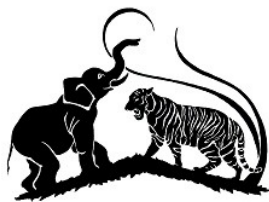
**(a) 35% threshold**

According to the draft forms, existing companies will have to tick whether they will be a "foreign company" upon re-registration. Companies whose foreign shareholders do not own more than 35% of the shares may tick "no". Theoretically, this should in particular allow such companies to own real estate and engage in an import, export and trading business. However, it is still unknown how the Land Registration Departments/Registration of Deeds Offices (that are responsible for registering the change of land ownership) and the Department of Trade (that is responsible for the issuance of importer/exporter registration certificates) will react to the change.

**(b) SMEs**

Companies will also have to tick whether they will be a "small company" (not more than 30 employees and a turnover of not more than Ks. 50 million in the previous fiscal year) upon re-registration. Administration of a small company is in certain aspects simpler than that of other companies (e.g., no annual general meeting, no financial statements) according to the Companies Law, but not so much in practice as small companies still have to file audited annual financial statements with the tax office.

**(c) Consequences of a failure to re-register within the prescribed period**



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The re-registration period is 6 months according to the draft, which would translate to a period from 1 August 2018 to 31 January 2019. Existing companies and branches/rep offices that fail to register within this period may be deleted from the registry (an “undelete” function is available at DICA’s discretion). Engaging in business while the company is deleted may result in the shareholders and directors becoming liable for the debts of the company.

**(d) Old registration certificates probably to be returned to DICA**

Upon re-registration, DICA will issue a new registration number and a new company (or overseas corporation) registration certificate (which we suppose will look different from the present registration certificates). In line with DICA’s current practice to request the return of old originals before issuing new ones, we suppose that the old registration certificate will have to be returned upon re-registration.

**(e) Significance of the abolishment of the “form of permit”**

The new Companies Law does away with the “form of permit” issued to foreign-invested companies, branches and rep offices. We suppose that the original form of permit will have to be returned to DICA together with the old company (or branch/rep office) registration certificate upon re-registration.

The current form of permit shows the entity’s objects (e.g., “telecom services” or “import, export and trade of construction materials”) and is considered by many to embody an official permission for the foreign-invested entity to engage in these activities. In reality, this belief is somewhat mistaken as the current form of permit only certifies that the entity may in principle operate a business in the country in spite of its foreign ownership; DICA does not guarantee that the specific objects for which the entity was formed may be pursued legally in Myanmar.

Nevertheless, the form of permit is often shown to (potential) business partners to stress that a specific activity is allowed. Furthermore, it is an important document in license applications (e.g., for a telecom-related license) and applications for registration (e.g., registration as an importer/exporter), and it is currently unknown how business partners and authorities will react to its disappearance.

**(f) Significance of the exclusion of the company’s objects from the model constitution**

In a similar vein, the new model constitution (draft: <https://tinyurl.com/y9puqap6>) does not, unlike the current standard memorandum of association, contain any reference to



a company's objects. When re-registering an existing company, applicants will (according to the drafts of the forms published by DICA) have to tick whether the company will adopt the model constitution or use its own constitution as attached to the application. For reasons similar to those explained in the previous paragraph (it is not known yet how licensing and other authorities and business partners will react to the disappearance of the objects of a company), it may in many cases be prudent to use a tailor-made constitution.

It should be noted that both the adoption of the model constitution as well as the adoption of a tailor-made constitution require a special resolution from the company's shareholders (section 17 Companies Law) as the existing memorandum of association and articles of association are altered.

The draft forms published by DICA are at odds with the Companies Law (which provides for a transition period of one year during which the objects of an existing company continue to apply, section 12 (e)), and it is hoped that this will be rectified.

**(g) Tailor-made constitution for joint venture companies**

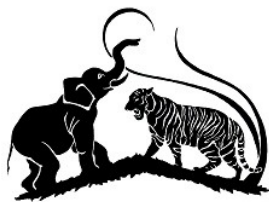
For existing joint venture companies, re-registration provides a good opportunity to bring the constitution in line with the joint venture or shareholders' agreement.

**(h) When to re-register**

Given that it is not known yet how well the new registration system will work on 1 August and how other authorities and business partners will react to the new registration certificates, we think that it is best to wait with re-registration a bit until things have become clearer.

**(i) Implication for travel and visa arrangements**

The loss of the old and issuance of new, different-looking registration documents is of particular concern if the respective entity should issue an invitation letter for a visa, in particular a visa on arrival: Those wishing to travel under such an arrangement on or after 1 August may - unless the Ministry of Labour, Immigration and Population issues a reassuring notification in the meantime - wish to enquire in advance with (i) the airline and (ii) the immigration counter at the airport of disembarkation whether they can board the plane and enter the country with the registration certificates in their possession.



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### **(j) Things will become more difficult for branches and rep offices**

The re-registration of a branch or rep office (“overseas corporation”) requires documents and information that may currently not be on file with DICA such as a Myanmar translation of the headquarters’ constitution and details of the headquarters’ current directors and its company secretary. Any changes within the headquarters have to be notified to DICA or otherwise stiff penalties apply.

### **(k) Requirement to have at least one ordinarily resident director (or authorised representative)**

At least one director of a company incorporated in Myanmar (and the “authorised representative” of an overseas corporation) must be ordinarily resident in the country (be a permanent resident or reside in Myanmar for at least 183 days in each 12 month period commencing from 1 August 2018). Existing companies, branches and rep offices should have one year to comply (section 12(e) Companies Law), but the draft of the forms for re-registration contain no such transition period. We hope that this will be corrected.

As shareholders of a company without at least one ordinarily resident director risk becoming liable for the company’s debts, foreign investors may wish to consider appointing an ordinarily resident person as a nominee director (as it happens, we offer such services within our company secretary services).

### **(l) Assistance with re-registration**

It is still a bit early, but please don’t hesitate to contact us if you require assistance with re-registration.

## **2. Standard criteria for investments in hospitals and traditional medicine**

On 3 May 2018, the Ministry of Health and Sport published a list of criteria that investors have to fulfill if they intend to invest in the following businesses (<https://tinyurl.com/y9y9c7fe>):

- Private hospital services;
- manufacturing of traditional medicine and medical products; of traditional drugs; of traditional medicinal herbs;
- traditional cultivation and production of herbs;



- “traditional medicine research and laboratory”.

### **3. Standard criteria for investments in forests, flora and fauna species, mineral production, gem stone manufacturing and pearl cultivation**

On 3 May 2018, the Ministry of Natural Resources and Environmental Conservation published a list of criteria that investors have to fulfill if they intend to invest in the following businesses (<https://tinyurl.com/y96sajn4>):

- Extraction of wood from government-owned forest and forest-covered land;
- establishment of forest plantations on forest land;
- wood-based industries;
- import, multiplication and sale of genetically modified organisms and living modified organisms;
- high technology research and business related to the breeding, cultivation and production of genetically superior seeds and other plant materials used for propagation of valuable and rare flora species;
- import, export, breeding and production of wild flora and fauna species for commercial purposes;
- large-scale production of minerals with foreign investment;
- small-, mid- and large-scale production of minerals with local investment;
- manufacturing and marketing of gems, jewelry and finished products with foreign investment; or with local investment;
- pearl cultivation and production.

### **4. Distinction between semi-knocked down (SKD) and dismantled knocked-down (SKD)**

According to MIC Notification 85/2017 (<https://tinyurl.com/yddjcknv>), cars may be manufactured from a semi-knock down (SKD) kit, i.e. from partly assembled components imported from abroad. Such vehicles are considered to have been produced in Myanmar which seems to entail certain advantages, e.g. the possibility to register them in Yangon without the need to prove that they replace old cars and, apparently, also tariff benefits.



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The MIC has now published standard operating procedures in English - <https://tinyurl.com/y96nmwcr> - (they were already previously published in Myanmar) to distinguish “SKD” (semi-knock down) from “DKD” (“dismantled knock down”) in order recognise parts that were not approved by the MIC so as to ensure that the benefits are limited to the production of vehicles with new components and importers of complete vehicles (minus a few parts) are excluded.

### 5. **Investment application guidebook; investment guidebook**

DICA has published a pretty good guidebook on the MIC permit and endorsement procedure: <https://tinyurl.com/y9h5tpmo> and, in addition, an investment guidebook in which they try to highlight specific investment opportunities: <https://tinyurl.com/y8rv868b>.

### 6. **Our general corporate, licensing and government relations services**

In this newsletter, we would like to introduce our general corporate, licensing and government relations services. Please do not hesitate to request a fee proposal; we are sure that we can offer you a good deal.

Our services comprise in particular:

- Registration of companies, branches and representative offices;
- assistance with re-registration under the new Companies Law;
- obtaining MoUs for, and registration of, international non-governmental organizations (INGOs);
- obtaining investment permits and endorsements from the Myanmar Investment Commission and the Regional and State Investment Commissions;
- obtaining other required licenses;
- obtaining Central Bank approval for cross-border shareholder loans;
- winding-up of companies, branches and representative offices;
- building relationships with relevant authorities;
- lobbying causes;
- negotiating with authorities.



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A full list of our services can be found in our brochure: <https://tinyurl.com/y7u8czny>

## 7. Electricity and energy news

- (a) Myanmar energy sector has stumbled in the right direction (says a communication officer at MPRL E&P): <https://tinyurl.com/yagpbez5>
- (b) Enra subsidiary installs offloading and storing facility for Yetagun gas field: <https://tinyurl.com/y78mukzq>
- (c) Myanmar uses 6,500 of LPG monthly (but traders say that margin is too low): <https://tinyurl.com/y8n7u9k2>
- (d) Petronet to build LNG terminals in four nations, among them Myanmar (but Myanmar plans seem to be at the early stages): <https://tinyurl.com/ybyvaafi>
- (e) Government seeks to get as much ODA as it can for energy development: <https://tinyurl.com/y8grrx2i> (The numbers in this article do not seem to 100% add up, but it is interesting to note that China seems to provide 75% of the ODA in the energy sector, eclipsing Japan and the World Bank.)
- (f) TTCL's 1,280 MW coal-fired power project in Kayin State cancelled - or was it?: <https://tinyurl.com/ybhbbq7g> (Interesting read - Union government and State government seem to be at odds over whether to promote coal or LNG.)
- (g) Myanmar developer of an offshore supply base to list on Toronto Stock Exchange by reverse takeover: <https://tinyurl.com/yactolw3>

## 8. Market access and other news

- (a) China Communications Construction Company signs framework agreement for drafting and mapping out a programme proposal for the Yangon New City Development Project: <https://tinyurl.com/ybxd8ka5> (Competitors may get a chance to challenge the bid later.)
- (b) Ministry of Home Affairs lobbied (by regional governments and the Ministry of Hotels and Tourism) to allow casinos: <https://tinyurl.com/y97asy93> (And this is exactly where the difficulty is: The Ministry of Home Affairs is military-controlled, the regional governments and the Ministry of Hotels and Tourism are NLD-controlled.)



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- (c) **MyTel to start services in Q2/2018:** <https://tinyurl.com/yaa8tc2s> (Didn't they already announce this for Q1?)
- (d) **Ooredoo teams up with LAN gaming center:** <https://tinyurl.com/ybarp5ab>
- (e) **Great Hor Kham to sign PPA (hydropower), list on YSX:** <https://tinyurl.com/y9n3bsh8>

### 9. Tenders

- (a) **General Department of Rural Development:** Purchase of 145,980 t-shirts: <https://tinyurl.com/y7e94nhp>
- (b) **Myanma Oil and Gas Enterprise:** Purchase of equipment: <https://tinyurl.com/yauk457n>
- (c) **Department of Power Transmission and System Control:** Design, supply and installation of two 500kV GIS substations (Japanese and joint venture companies only): <https://tinyurl.com/y72zcuuu>
- (d) **Myanma Oil and Gas Enterprise:** Purchase of equipment and construction material: <https://tinyurl.com/ycqx3ckq>
- (e) **Myanma Railways:** Purchase of 100 rail coaches (Korean companies only): <https://tinyurl.com/ya8j64lv>

We hope that you have enjoyed reading our newsletter and found it useful.

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Managing Director

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