

Approval Requirements for Payment of Remuneration and Other Benefits to Directors and Related Parties of Company

On 3rd January 2020, the Directorate of Investment and Company Administration (“**DICA**”) issued its Notification No. 2/2020 re: Guidance on Approval Requirements for Payment of Remuneration and Other Benefits to Directors and Related Parties (“**Notification**”).

Pursuant to Sections 187 and 188 of the Myanmar Companies Law 2017 (“**MCL**”), the Board of Directors (“**BOD**”) or the shareholders of a company can approve payment of remuneration or other benefits (“**Payments**”) to a director, a former director or a related party. Such benefits include giving a loan or a guarantee or entering into contracts with them.

The guidance on the approval requirements under the Notification for a company to make the Payments to its directors and related parties are summarized as follows:-

1. Approval by BOD

- 1.1 The BOD must consider whether the Payments to a director, a related party is (a) for the best interest of the company; (b) reasonable in such circumstance; and (c) made on the terms that are not worse than the arm’s length basis for the company (*Section 187(a)(vi) of the MCL*).
- 1.2 The Payments to the directors, the alternate directors or the secretaries must be recorded in the company’s Register (*Sections 187(b) and 189 of the MCL*).
- 1.3 The directors who vote in favour of the Payments at the BOD meeting must sign a certificate to confirm their opinion on 1.1(a) to (c) above (*Section 187(d) of the MCL*).
- 1.4 The directors must disclose the Payments to the company’s shareholders at the next annual general meeting (*Section 187(g) of the MCL*).
- 1.5 The company is not required to submit any form with DICA through the Myanmar Companies Online (“**MyCO**”) system if the BOD’s approval is granted in compliance with the requirements under the MCL as mentioned above.

2. Approval by Shareholders

- 2.1 The shareholders meeting for approval of the Payments must be held in compliance with the MCL. The company must submit the proposed notice of the meeting, the proposed explanatory statement and other related documents that will be sent to the shareholders together with the notice with DICA before issuing the notice to the shareholders as required under the MCL (*Section 188(b) to (g) of the MCL*).
- 2.2 Approval by the shareholders is required only if the board approval is not given.

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- 2.3 The company is required to submit only the Form D-2A (Proposed Notice to Members of Meeting Concerning Remuneration or Other Benefits) and the Form D-2B (Notice of Resolution Concerning Remuneration or Benefits) with the DICA through the MyCO system if the shareholders' approval is granted in compliance with the requirements under the MCL as mentioned above.



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