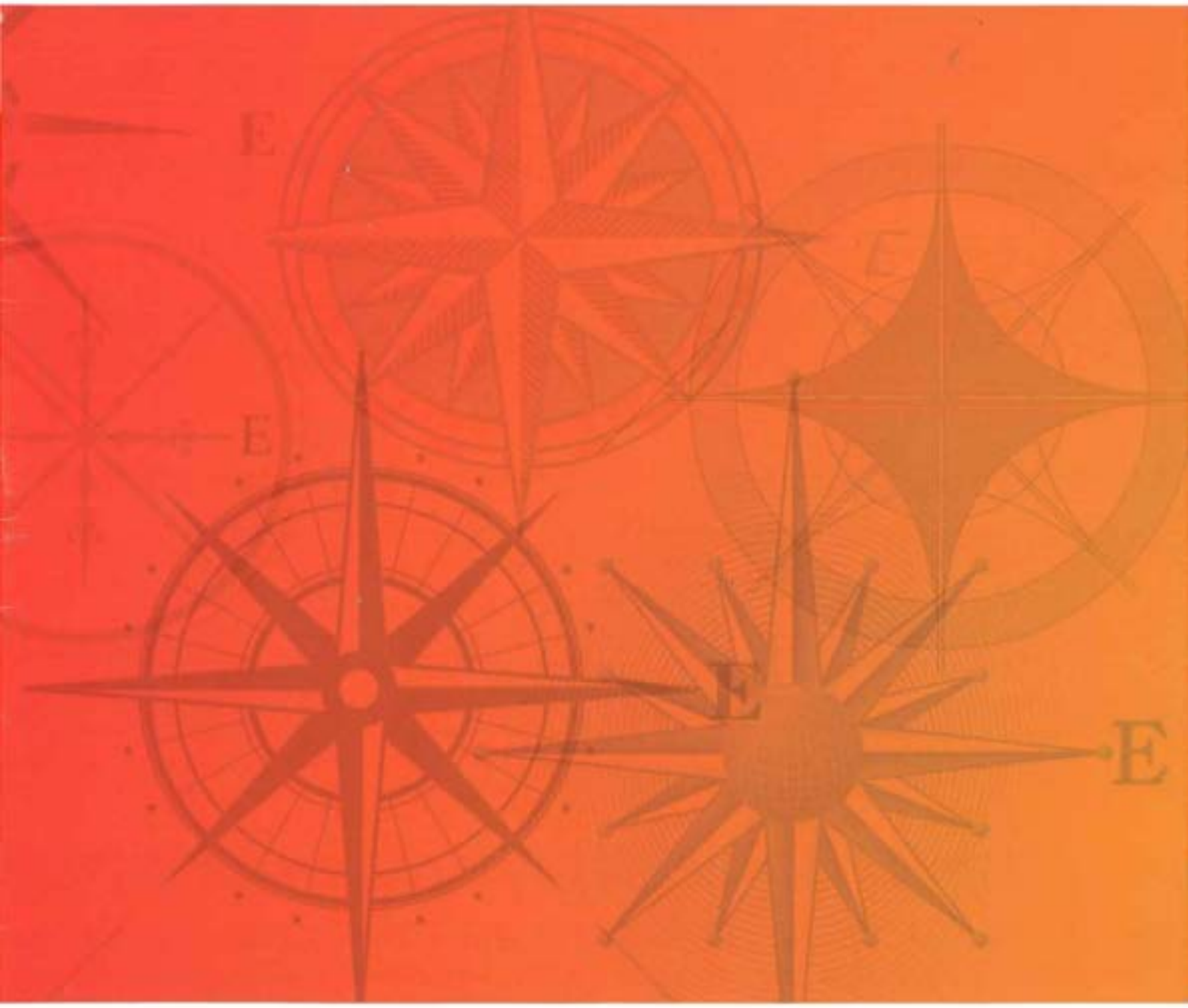
Corporate Governance Frameworks in Myanmar

A FACT-FINDING SURVEY



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About This Report

This report provides an overview of recent policy developments and the status of corporate governance in Myanmar. The information included in this report builds on responses from Myanmar companies to the OECD's questionnaire and subsequent interviews. The report aims to measure the gap between corporate governance practices by Myanmar companies and national regulations, as well as the gap between practices and the internationally recognised standards of corporate governance – the G20/OECD Principles of Corporate Governance. This report concludes with recommendations for further improvement of corporate governance in Myanmar; including the effective implementation of the new Companies Law and disclosure regulations and the formulation of a corporate governance code. In its Annex, the report includes excerpts from the stocktaking report of Myanmar submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative as well as the summary of companies' answers to the questionnaire.

This report was produced by Akito Konagaya, Corporate Governance and Corporate Finance Division[1], and Yuya Yamada, Special Projects and Outreach Unit, OECD Directorate for Financial and Enterprise Affairs. The authors would like to thank their colleagues in the OECD and counterparts in the Securities and Exchange Commission of Myanmar and Directorate of Investment and Company Administration. They would also like to thank staff members of WinCom Solutions Co., Ltd and Trust Venture Partners Co., Ltd who carried out interviews with Myanmar companies based on their responses to the OECD's questionnaire. This work has benefited from the financial support of the Ministry of Finance and Financial Services Agency of the Government of Japan.

[1] Akito Konagaya left the OECD on 30 June 2018 and has returned to the Financial Services Agency of the Government of Japan.

1. Introduction

1.1. Overview of the Policy Developments in Myanmar

1. Based on the notion that private sector development is crucial for national socio-economic growth by creating jobs and increasing incomes, the Government of Myanmar has been supporting the private sector to boost development.

2. As part of the wider economic reforms, the Securities Exchange Law was established and enacted in July 2013. The main purposes of the Law are (1) to establish a systematic capital market; (2) to protect investors; and (3) to regulate market participants such as public companies, securities companies and a stock exchange[2]. The Securities Exchange Law provides the fundamental governance framework for the capital market including the establishment of a securities and exchange commission; and a stock exchange. In line with this, the Securities and Exchange Commission of Myanmar (SECM) was formed in 2014 and started its operation one year after the establishment.

3. The process to establish a stock exchange in Myanmar began in 1996[3]. Myanmar Economic Bank (MEB) and Daiwa Institute of Research Ltd. (DIR) formed the Myanmar Securities Exchange Centre Co., Ltd. (MSEC) in 1996 with the final goal of establishing a stock exchange. Through cooperation among the Japan Exchange Group, Inc (JPX), DIR and the Central Bank of Myanmar, Yangon Stock Exchange (YSX) was established in the form of a joint-venture owned by MEB, DIR, and JPX in 2014.

4. After establishment, YSX issued its Listing Criteria followed by Securities Listing Business Regulations and Enforcement Regulations clarifying the application of the Business Regulations. In 2016, the First Myanmar Investment Co., Ltd. was listed on YSX as a first case. As of September 2018, there are five listed companies on the YSX, with an overall market capitalisation of almost 569 billion Myanmar kyats (approximately USD 369 million) and a daily trading volume of almost 72 million Myanmar kyats (approximately USD 47 000)[4].

5. Myanmar has also set out a revision of the Companies Law which was first introduced in 1914. The new Companies Law was enacted on 6 December 2017 and came into effect on 1 August 2018. The Directorate of Investment and Company Administration (DICA) modernised the Companies Law to reflect the current business and regulatory environment through reducing registration procedures and facilitating electronic company registration, among others[5]. One of the most important changes is that the revised Law stipulates that foreign investors are allowed to own up to 35 percent in local companies.

6. As seen above, Myanmar's security market has been developed with the financial and capacity building support of Japan since 1990s. The Government of Japan has also closely cooperated with the Myanmar government. In 2018, the Financial Services Agency of the Government of Japan, JPX and Daiwa Securities Group Inc. presented the Ministry of Finance of Myanmar with a support plan[6] for the further activation of the capital market

[2] https://secm.gov.mm/en/securities-and-exchange-commission-of-myanmar/

[3] https://ysx-mm.com/aboutysx/history/

[4] The Market Data as of 1 September 2018 on the website of YSX

[5] See Annex I for the details of the revision.

[6] https://www.fsa.go.jp/en/news/2018/20180125_2.html

of Myanmar. This support plan explicitly includes support for development of the corporate governance code.

1.2. OECD's Cooperation with Myanmar in the Field of Corporate Governance

7. The OECD has been contributing to the improvement of corporate governance framework in Southeast Asian countries including Myanmar through a series of projects with the financial support of the Government of Japan. In particular, the OECD-Southeast Asia Corporate Governance Initiative, which was launched in 2014, aimed to support the regional development of vibrant and healthy capital markets through the advancement of corporate governance standards and practices. In March 2018, the fifth meeting – final and conclusive meeting[7] – of the Initiative was held in Yangon, Myanmar. At the meeting, Myanmar, Viet Nam, Laos and Cambodia presented national stocktaking reports. In these reports, they acknowledge not only recent developments but also challenges that they have experienced since the launch of the OECD's Initiative in the region.

8. In January 2018, the OECD launched a country project "Supporting Corporate Governance Reform in Myanmar". This project aims to enhance Myanmar's corporate governance framework and thereby improve Myanmar companies' access to capital needed for investment. As a first step of this multi-year project, the OECD conducted a fact-finding survey using the G20/OECD Principles of Corporate Governance and Methodology for implementation as benchmarks for assessment. The next section of this report presents the results of the survey.

[7] After a full cycle of meetings in all countries, the fifth meeting was also concluding meeting of the OECD-Southeast Asia Corporate Governance Initiative and therefore presented the opportunity to welcome Myanmar, Laos and Cambodia into the OECD-Asian Roundtable on Corporate Governance.

2. Survey Results

2.1. Overview of Surveyed Companies

9. As of June 2018, there are five listed companies, approximately 300 unlisted public companies[8] and 50 000 private companies[9] in Myanmar[10]. In order to grasp the status of corporate governance in Myanmar, the OECD sent a questionnaire – which was formulated using the G20/OECD Principles of Corporate Governance and Methodology for implementation as benchmarks for assessment – to 51 Myanmar companies and received responses from 25 companies. These 25 companies consist of five listed companies, six unlisted public companies, and 14 private companies. A local consultancy firm[11] carried out interviews with all 25 companies on behalf of the OECD to confirm to what extent there is evidence that a company complies with the principles listed in the questionnaire.

10. Basic statistics of surveyed companies are shown in the following table. It should be noted that the average number of shareholders among private companies is fairly small since private companies' shareholders typically consist of a founder and her/his family members. Unsurprisingly, private companies in Myanmar are characterised by highly concentrated ownership structures.

Table 2.1. Basic statistics of surveyed companies[12]

	Public Companies	Private Companies
Asset Size (in million Myanmar Kyat and million USD)	MK 237 012 USD 175 (11)	MK 52 404 USD 39 (8)
Capital Size (in million Myanmar Kyat and million USD)	MK 23 773 USD 18 (10)	MK 9 128 USD 7 (9)
Average Number of Shareholders	3 769 (11)	3 (10)
Total Shareholding Ratio of Top Three Shareholders (arithmetic mean)	38.0% (9)	94.6% (7)
Total Shareholding Ratio of Top Three Shareholders (weighted average using capital size as a weight)	31.6% (9)	96.9% (7)

[8] Section 1 (c) (xxviii) of the new Companies Law defines a public company as "a company incorporated under this Law, or under any repealed law, which is not a private company". As can be seen from the definition of a private company, a company with more than 50 shareholders are classified as a public company.

[9] Section 1 (c) (xxv) of the new Companies Law defines a private company as "a company incorporated under this Law or under any repealed law which: (A) must limit the number of its members to fifty not including persons who are in the employment of the company; (B) must not issue any invitation to the public to subscribe for the shares, debentures or other securities of the company; and (C) may by its constitution restrict the transfer of shares".

[10] These approximate figures of unlisted public companies and private companies were provided by the SECM.

[11] WinCom Solutions Co., Ltd and Trust Venture Partners Co., Ltd

[12] Figures in the parenthesis are the number of samples.

2.2. Analysis of Questionnaire Responses by Companies

2.2.1. Notification to Shareholders of General Meetings

11. The right to participate in general shareholder meetings is a fundamental shareholder right. In order to allow investors adequate time for reflection and consultation, companies should be mindful of not sending voting materials too close to the time of general shareholder meetings. From this viewpoint, the following survey question was asked to companies:

Does your company provide shareholders – at least 14 days before the general shareholder meeting – with information concerning the date, location and agenda of the general shareholder meeting?

- **Public Companies**

12. Out of 11 public companies surveyed[13], 10 companies answered "Yes" to this question. One company, which has recently transformed into a public company, has not yet held an annual general meeting (AGM) so that its answer to this question is classified as "N/A"[14].

13. Regarding the timing of notification, three companies answered "14 days", five companies answered "21 days", and two companies answered "one month". Companies usually attach an agenda, annual report and proxy form to the notification[15]. In addition to sending a notification to their shareholders by delivery mail, companies also use a newspaper, website, or Social Networking Service (SNS).

Table 2.2. Timing of notification

	Number of companies
14 days	3
21 days	5
One month	2

14. It is natural that all companies answered "Yes" to this question because the Companies Law prior to the revision stipulated that public companies must, in principle, send a notification at least 14 days in advance of a shareholder meeting[16]. Since the new Companies Law introduced a rule that requires a general meeting be called by not less than 21 days' notice in writing (28 days' notice in writing in the case of a public company)[17], it is expected that following the implementation of the new law the notification period will be longer than that of the past practice.

- **Private Companies**

15. Out of 14 private companies surveyed, four companies answered "Yes" to this question. 10 companies' answers are classified as "N/A" since they do not have a practice of formally holding an AGM. It is assumed that these companies do not have to formally hold shareholders meetings since all shareholders – which typically consist of a founder

[13] These include five listed companies. The same hereinafter.
[14] This treatment is the same for Question 2 to Question 4.
[15] Two companies answered that they also attach "Director Nomination Form" to the notification.
[16] Section 79 (1) (a) of the Companies Law prior to the revision
[17] Section 152 (a) (i)

and her/his family members – are board members and they meet and discuss at board meetings. For example, one company answered that it holds an annual business meeting in which shareholders and managers participate.

2.2.2. Equitable Treatment of Shareholders

16. Company procedures should not make it unduly difficult or expensive to cast votes. Examples of potential impediments to shareholder participation include (1) charging fees for voting; (2) the requirement of personal attendance at general shareholder meetings to vote; (3) holding the meeting in a remote location; and (4) allowing voting by a show of hands only. From this viewpoint, the following survey question was asked to the companies:

Do the processes and procedures for general shareholder meetings of your company allow for equitable treatment of all shareholders?

- **Public Companies**

17. Out of 11 public companies surveyed, 10 companies answered "Yes" to this question, and one company's answer is classified as "N/A".

18. Both the survey and interview results do not appear to be signalling 'undesirable' practices with respect to shareholder meetings; such as charging fees for voting, requiring personal attendance at general shareholder meetings to vote, or holding the meeting in a remote location. However, companies, in principle, allow voting by show of hands only. One company answered that it exceptionally counts votes in case of election of directors. This practice is not expected to change after the enactment of the new Companies Law because the Law stipulates that "a resolution put to the vote at a meeting must be decided by a show of hands unless a poll is demanded"[18][19].

- **Private Companies**

19. Out of 14 private companies surveyed, four companies answered "Yes" to this question, and 10 companies' answers are classified as "N/A". Since most of the private companies surveyed do not have a practice of formally holding an AGM as stated above, there is not much implication in their responses to this question.

2.2.3. Shareholders' Right to Ask Questions to the Board

20. In order to encourage shareholder participation in general shareholder meetings, many countries have improved the ability of shareholders to submit questions in advance of the general meeting and to obtain replies from management and board members. From this viewpoint, the following survey question was asked to the companies:

Does your company provide shareholders the opportunity to ask questions to the board?

- **Public Companies**

21. Out of 11 public companies surveyed, 10 companies answered "Yes" to this question, and one company's answer is classified as "N/A".

22. However, it seems that most of those 10 companies provide shareholders with the opportunity to ask questions only in AGMs. The new Companies Law also seems to assume

[18] Section 152 (b) (iii)

[19] Section 152 (b) (iv) further stipulates that "a poll may be demanded on any resolution by (A) the chair; (B) at least five members; or (C) members with at least 10 percent of the votes that may be cast on the poll".

that shareholders ask questions to the board in an AGM[20]. Namely, shareholders who cannot attend an AGM are likely to lose the opportunity to ask questions to the board.

23. One company answered that due to time constraints throughout AGMs, it provides shareholders with extra three-day meetings (after the AGM) in which they can ask questions to the board.

- **Private Companies**

24. Out of 14 private companies surveyed, four companies answered "Yes" to this question, and 10 companies' answers are classified as "N/A".

2.2.4. Shareholder Proposal Rights

25. In addition to strengthening shareholders' right to ask a question to the board, many countries have also improved the ability of shareholders to place items on the agenda with a view to encourage shareholder participation in the corporate decision making process. From this viewpoint, the following survey question was asked to the companies:

Does your company provide shareholders (with certain holding ratio) the opportunity to place items on the agenda of general shareholder meetings?

- **Public Companies**

26. Out of 11 public companies surveyed, one company answered "Yes", nine companies answered "No", and one company's answer is classified as "N/A".

27. Survey results indicate that it is not seen as a common practice to provide shareholders with the opportunity to place items on the agenda. Only one company answered "Yes" to this question and said that it may arrange a special board meeting upon request from major shareholders and then may place items requested by them on the agenda of an AGM.

28. After August 2018, companies are required to adapt to the new Companies Law which stipulates that "members holding shares providing not less than one-tenth of the votes that may be cast at a general meeting of the company, or at least 100 members who are entitled to vote at a general meeting, may give notice to the company of a proposed resolution to be moved at a meeting of the company"[21].

- **Private Companies**

29. Out of 14 private companies surveyed, four companies answered "Yes" to this question, and 10 companies' answers are classified as "N/A". Since private companies' shareholders typically consist of a founder and her/his family members and at the same time they are members of the board, they may be able to freely place or change items on the agenda. Therefore, it is plausible that more private companies – relative to public companies – answered "Yes" to this question. It should be noted that one company answered that it allows shareholders to add or change items on the agenda until two days ahead of shareholders meetings.

[20] Section 146 (c) stipulates that "the chair must allow a reasonable opportunity for the members to ask questions or make comments about the management of the company". Since the title of Section 146 is "Annual general meeting", it is reasonable to interpret that the new Companies Law assumes that shareholders ask questions to the board in an AGM.

[21] Section 151 (g)

2.2.5. Shareholders' Participation in Nomination and Election

30. To elect the members of the board is also a basic shareholder right. For the election process to be effective, shareholders should be able to participate in the nomination of board members and vote on individual nominees. The new Companies Law also stipulates that "the directors of the company shall be appointed by the members passing an ordinary resolution in a general meeting"[22]. From this viewpoint, the following survey question was asked to the companies:

Does your company facilitate effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members?

- **Public Companies**

31. Out of 11 public companies surveyed, nine companies answered "Yes", one company answered "No", and one company's answer is classified as "N/A".

32. As far as can be seen from the survey and interview results, there are no undesirable practices where shareholders cannot vote on individual nominees. In this respect, public companies seem to have already complied with the new Companies Law which stipulates that "A resolution at a general meeting to appoint a director may only refer to one proposed director; however separate resolutions to appoint additional directors may be made at the same meeting"[23].

33. One company answered "No" to this question saying that there has not been much interest in becoming a company director because of uncompetitive remuneration, although this statement does not directly answer the above question on shareholders' participation in nomination and election.

- **Private Companies**

34. Out of 14 private companies surveyed, two companies answered "Yes", two companies answered "No", and 10 companies' answers are classified as "N/A". Although one company which answered "No" to this question said that there is no formal nomination and election process for board members, the company also said that each shareholder has right to nominate its representative director based on its shareholding ratio.

2.2.6. Vote in Absentia

35. In order to facilitate shareholder participation, many countries have promoted the use of information technology in voting, including secure electronic voting in all listed companies. Although the new Companies Law enables foreign investors to invest in Myanmar companies[24], it may be difficult for foreign investors to physically attend shareholder meetings. Therefore, voting in absentia will be one of the important issues to be addressed by Myanmar authorities. From this viewpoint, the following survey questions were asked to the companies:

[22] Section 173 (a) (ii)

[23] Section 173 (c)

[24] Section 1 (c) (xiv) stipulates that "foreign company means a company incorporated in the Union in which an overseas corporation or other foreign person (or combination of them) owns or controls, directly or indirectly, an ownership interest of more than thirty-five per cent". In other words, the new Companies Law will allow foreign ownership of up to 35 percent in Myanmar companies, before the companies are classified as "foreign companies" under the law.

(1) Does your company enable shareholders to vote in absentia?
(2) Does the vote in absentia have equal effect as the vote in person?

- **Public Companies**

36. With respect to the first question, all 11 public companies surveyed answered "No". Therefore, their answers to the second question are classified as "N/A".

37. All 11 public companies surveyed do not enable shareholders to vote in absentia nor use electronic voting system. This is partly because the Companies Law – both the one prior to the revision and the revised law – does not explicitly allow shareholders who do not attend shareholders meetings to exercise their votes in writing. In addition, introducing voting in absentia which utilises electronic voting system may be challenging at this moment given the stage of the development in the country's infrastructure.

38. On the other hand, all 11 public companies surveyed answered that they allow shareholders to exercise their voting rights by using a proxy and that equal effect is given to votes whether cast by a proxy or not. It should also be noted that the new Companies Law allows proxy voting and gives it an equal effect as the vote by a shareholder who appoints a proxy[25].

- **Private Companies**

39. With respect to the first question, all 14 private companies surveyed answered "No". Therefore, their answers to the second question are classified as "N/A". The reason why all private companies surveyed answered "No" to this question is the same as that of public companies.

40. Only two private companies said that they allow shareholders to exercise their voting rights by using a proxy. This result seems to be plausible since most of the private companies surveyed do not have a practice of holding shareholders meetings.

2.2.7. Managing Abusive Related Party Transactions

41. As can be seen from the overview of surveyed companies, corporate ownership is concentrated in Myanmar, and significant portions of income and/or costs may arise from related party transactions (RPTs). Foreign investors such as institutional investors would pay great attention to whether those transactions are adequately addressed to protect their own interests. Therefore, how to prevent potential abuse of RPTs is an important policy issue in the market, and from this viewpoint the following question was asked to the companies:

Does your company approve and conduct RPTs in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders?

[25] Section 154 (a) stipulates that "a member entitled to attend and vote at a meeting of a company may appoint a proxy to attend the meeting and exercise the right of the member to votes on their behalf in accordance with this section and subject to the company's constitution". Also, Section 154 (b) stipulates that "the proxy need not be a member of the company and shall be entitled to exercise the same powers on behalf of the member appointing them that the member itself could exercise at the meeting of the company or in voting on a resolution".

- **Public Companies**

42. Out of 11 public companies surveyed, 10 companies have written procedures on how to manage RPTs and answered "Yes" to this question. Only one public company does not have PRT procedures and answered "No" to this question.

43. In particular, three listed companies elaborate in their disclosure document for listing (DDL)[26] or Prospectus their RPT procedures. In general, they first define related parties, RPTs, and material RPTs using certain quantitative criteria. Then, they set procedures on how to approve and review material RPTs. For example, two listed companies classify RPTs into three categories using the latest audited net tangible asset as a criterion, and set approval and review procedures for each category as shown in the following table.

Table 2.3. Example of RPT procedures in listed companies

	Range of Each Category	Approval and Review Procedure
Category 1	RPTs of which value is equal to or above three percent of the latest audited net tangible asset of the company	RPTs must be approved by the Audit Committee prior to entry.
Category 2	RPTs of which value is below three percent of the latest audited net tangible asset of the company but is equal to or above 100 million Myanmar Kyat	RPTs do not have to be approved by the Audit Committee prior to entry, but must be approved by the Chair prior to entry and shall be reviewed on a quarterly basis by the Audit Committee.
Category 3	RPTs of which value is below 100 million Myanmar Kyat	RPTs do not have to be approved by the Audit Committee nor Chair prior to entry, but shall be reviewed on a quarterly basis by the Audit Committee.

44. With respect to unlisted public companies that answered "Yes" to this question, two out of five companies have RPT procedures in place which are almost the same as those of listed companies shown in the above table. Regarding the other three unlisted companies' RPT procedures, it is unknown whether they are as detailed as those of listed companies since this survey has not analysed the content of their written procedures[27].

45. The new Companies Law contains rules on RPTs and provisions of benefits to directors. Specifically, the Law stipulates that "the board of a company may … authorise a payment or benefit or loan or guarantee or contract of the kind … to a director or other related party of the company if it is approved by members"[28]. The Law also stipulates that "the director or relevant related party must not vote on the resolution at the general meeting"[29]. It should be noted that no surveyed companies have a practice or procedure of

[26] Companies that are going to be listed without making public offering are required to publish a DDL. See Listing Procedure on YSX's website: https://ysx-mm.com/regulations/listing-procedure/

[27] RPT procedures of these three unlisted public companies are not publicly available. Myanmar authorities have pointed to a potential need for further examination on whether these procedures are adequately implemented.

[28] Section 188 (a)

[29] Section 188 (f)

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[28] Section 188 (a)

[29] Section 188 (f)

leaving material RPTs up to shareholders' judgement as required by the new Companies Law.

- **Private Companies**

46. Out of 14 private companies surveyed, three companies answered "Yes" to this question, while 11 companies answered "No".

47. Out of three companies which answered "Yes", one company said that it has RPT procedures for inter-company transactions. In addition, another company said that interest of directors must be declared before shareholders meetings and necessary procedures must be followed if RPTs are detected.

2.2.8. Disclosure of Financial Statements

48. Audited financial statements showing the financial performance and the financial situation of the company enable investors to monitor company performance and also to value its securities. From this viewpoint, the following survey questions were asked to the companies:

(1) Does your company publicly disclose financial statements – including the balance sheet and the profit and loss statement – at least annually?
(2) Are financial statements audited by an external auditor before being disclosed?

- **Public Companies**

49. Out of 11 public companies surveyed, 10 companies answered "Yes" to the first question and publicly disclose financial statements annually. One company, which answered "No" to this question, discloses its financial statements only to shareholders.

50. This positive result is in line with disclosure regulations which (i) require companies to send financial statements to their shareholders with a notification of shareholders meetings[30]; and (ii) require public companies having more than 100 shareholders and listed companies to submit to the SECM an annual report, a half-yearly report and an extraordinary report[31]. It should be noted, however, that nearly half of the public companies which are subject to the latter requirement have not filed disclosure documents[32], and that the SECM has not published the submitted ones on its website.

51. With respect to the second question, all 11 public companies surveyed answered "Yes". This result is also in line with the new Companies Law which stipulates that the financial statements shall be audited by the auditor of the company[33][34].

- **Private Companies**

52. All 14 private companies surveyed answered "No" to the first question. All of them disclose financial statements only to shareholders. With respect to the second question, all except one private company answered "Yes". The private company which answered "No"

[30] Section 260 (c) of the new Companies Law stipulates that "every company ... shall send a copy of such financial statements ... to the registered address of every member of the company with the notice calling the meeting at which it is to be laid before the members of the company". It should be noted that Section 257 (c) stipulates that small companies are exempt from this requirement.

[31] Notification (1/2016) of the SECM, Section 1 (a)

[32] The stocktaking report submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative

[33] Section 260 (b)

[34] It should be noted that only Myanmar citizen desirous of registration as a Certified Public Accountant may apply to the Myanmar Accountancy Council for such registration. See Section 12 of the Myanmar Accountancy Council Law.

to this question may fail to comply with the provision of the new Companies Law stated above.

2.2.9. Disclosure on Major Shareholdings

53. To be informed about the ownership structure of the company is one of the basic rights of investors. Disclosure of ownership data should be provided once certain thresholds of ownership are passed. From this viewpoint, the following survey question was asked to the companies:

Does your company publicly disclose its major shareholders and their holding ratio at least annually?

- **Public Companies**

54. Out of 11 public companies surveyed, six companies answered "Yes" to this question and publicly disclose information about major shareholders and their holding ratio in their annual report and/or on their website. Out of these six companies, two companies answered that it discloses top 10 shareholders, one company answered that it discloses top 20, and one company answered that it discloses top 50[35].

55. Five companies answered "No" to this question. Out of these five companies, two companies answered that they disclosed the 10 largest shareholders in their DDL or Prospectus when they were listed on the YSX but have not updated the information since then. One company out of these five answered that it discloses its shareholder distribution in its annual report but does not disclose information about major shareholders in detail. Also, one company answered that it discloses this information only to shareholders, and another company answered that it will start disclosing this information[36].

56. Public companies which make public offering are required to disclose information about their top 10 shareholders in their Prospectus[37]. Also, companies which are going to be listed are required to disclose information about their top 10 shareholders in their DDL[38]. However, since the SECM has not prepared a format of an annual and semi-annual report, it is not ensured that these companies will disclose information about major shareholders periodically[39].

57. It is worth noting that the average number of shareholders among companies which answered "Yes" is 4 973, while the average among companies which answered "No" is 2 322. It is assumed that companies are under more pressure to disclose information about major shareholders when the number of shareholders is larger.

- **Private Companies**

58. All 14 private companies surveyed answered "No" to the question. All of them disclose information about major shareholders only to shareholders. This result seems to

[35] The other two companies did not specify in their answer to the question the range of major shareholders they disclose in their annual report and/or on their website.

[36] This company also said that since the number of its shareholders is limited, all shareholders know each other's shareholdings.

[37] Public companies which make public offering must prepare a Prospectus pursuant to Notification (2/2015) of the SECM, Section 3. The format of a Prospectus has been prepared by the SECM.

[38] The format of a DDL is the same as that of a Prospectus.

[39] It should be noted that companies are required to disclose a change of their major shareholders in an extraordinary report, but this disclosure is ad-hoc (not periodical) and limited to a change of shareholders who own more than 20 percent of voting rights. See Notification (1/2016) of the SECM, Section 4 (b).

be plausible because generally the number of shareholders in private companies is limited and they know other shareholders' holding ratio.

2.2.10. Disclosure on Remuneration of Board Members and Key Executives

59. Information about board and executive remuneration is also of concern to investors. Companies are generally expected to disclose information on the remuneration of board members and key executives so that investors can assess the costs and benefits of remuneration plans. From this viewpoint, the following survey questions were asked to the companies:

(1) Does your company publicly disclose remuneration of board members at least annually?
(2) Does your company publicly disclose remuneration of key executives at least annually?

- **Public Companies**

60. Out of 11 public companies surveyed, three companies answered "Yes" to the first question. Out of these three companies, two companies publicly disclose a total amount of remuneration of board members, while one company publicly discloses distribution of remuneration of board members using a salary range[40].

61. Out of 11 public companies surveyed, eight companies answered "No" to the first question. Out of these eight companies, two companies answered that shareholders know remuneration of board members. Also, three companies out of eight answered that board members are underpaid or do not receive remuneration.

62. With respect to the second question, out of 11 public companies surveyed, three companies answered "Yes". Out of these three companies, two companies publicly disclose a total amount of remuneration of key executives, while one company publicly discloses remuneration amounts at individual level.

63. Out of 11 public companies surveyed, eight companies answered "No" to the second question. Out of these eight companies, one company discloses this information only to shareholders. Also, one company publicly discloses "salary and allowance" in its annual report, but it seems to include remuneration of key executives as well as that of other staff members.

64. The standard formats of Prospectus and DDL require companies to disclose the aggregate amount of remuneration and benefits in kind paid to directors, managing directors, managers and managing agents of the issuer[41]. However, as described above, it is not ensured that companies will disclose the information periodically since the standard formats of annual and semi-annual reports have not been prepared yet.

65. It is worth noting that the average number of shareholders among companies which answered "Yes" to these questions is 8 673, while the average among companies which answered "No" is 1 929. It is assumed that companies are under more pressure to disclose information about remuneration when the number of shareholders is larger.

- **Private Companies**

66. All 14 private companies surveyed answered "No" to the first question, out of which 13 companies answered that they disclose remuneration of board members only to

[40] This company discloses neither a total amount nor an individual amount.

[41] It should be noted that the format of a Prospectus does not explicitly require companies to disclose remuneration of board members and remuneration of key executives separately.

shareholders. Also, all 14 private companies surveyed answered "No" to the second question, out of which 12 companies answered that they disclose remuneration of key executives only to shareholders.

2.2.11. Disclosure on Board Members' Qualification

67. Investors require information on individual board members in order to evaluate their experience and qualifications and assess any potential conflicts of interest that might affect their judgement. From this viewpoint, the following survey question was asked to the companies:

Does your company publicly disclose information about board members' qualification?

- **Public Companies**

68. Out of 11 public companies surveyed, six companies answered "Yes" to this question, while five companies answered "No".

69. For example, one company out of these five companies which answered "No" discloses only qualification of candidates of board members and does not disclose qualification of existing board members.

70. The formats of DDL and Prospectus require companies to disclose information about their board members and they include board members' biography and education. Therefore, it is assumed that companies disclose some information about board members' qualification at least when they were listed or made public offering.

- **Private Companies**

71. Out of 14 private companies surveyed, two companies answered "Yes" to this question and disclose information about their board members on their website. 12 companies answered "No", out of which nine companies disclose the information only to shareholders.

2.2.12. Disclosure on Selection Process of Board Members

72. On the same basis as in the previous subsection (2.2.11), the following survey question was asked to the companies:

Does your company publicly disclose information about selection process of board members?

- **Public Companies**

73. All 11 public companies surveyed answered "No" to this question.

74. It seems to be a common practice across those 11 companies that the board or the nomination committee nominates candidates for directors to be elected by shareholders at the AGM. Although this procedure is recognised by shareholders, it is not formally written and publicly disclosed by any of those companies.

- **Private Companies**

75. All 14 private companies surveyed answered "No" to this question, out of which three companies answered that they disclose information about selection process of board members only to shareholders.

2.2.13. Disclosure on Other Company Directorships of Board Members

76. On the same basis as in 2.2.11, the following survey question was asked to the companies:

Does your company publicly disclose information about other company directorships of board members?

- **Public Companies**

77. Out of 11 public companies surveyed, three companies answered "Yes" to this question. These three companies publicly disclose board members' directorships in other companies in their annual report and/or website.

78. Out of 11 public companies surveyed, eight companies answered "No" to this question. One company publicly discloses board members' directorships in other companies, but the information is limited to directorships in other listed companies and the information on board members' directorships in other unlisted companies has not been disclosed.

79. The formats of DDL and Prospectus require companies to disclose information about their board members and it includes board members' material concurrent positions at other corporations. Therefore, it is assumed that companies disclose information about other company directorships of board members at least when they were listed or made public offering.

- **Private Companies**

80. Out of 14 private companies surveyed, one company answered "Yes" to this question and discloses information about other company directorships of board members on its website. Other 13 companies answered "No" to this question, out of which six companies answered that they disclose the information only to shareholders.

2.2.14. Disclosure on Board Members' Independence

81. On the same basis as in 2.2.11, since transparent criteria on board members' independence are important for investors to assess any potential conflicts of interest that might affect their judgement, it would be desirable to disclose reasons why board members are considered as independent. From this view point, the following survey question was asked to the companies:

Does your company publicly disclose whether board members are regarded as independent by the board?

- **Public Companies**

82. Out of 11 public companies surveyed, eight companies answered "Yes" to this question, while three companies answered "No".

83. Out of eight companies that answered "Yes", one company publicly discloses its criteria on independence such as "a board member who has no relationship with the company" and also reviews independence of each director annually. However, the other seven companies have not disclosed what kind of elements constitutes independence.

- **Private Companies**

84. Out of 14 private companies surveyed, one company answered "Yes" to this question. Other 13 companies answered "No" to this question, out of which one company

discloses only to shareholders information about whether its board members are regarded as independent or not but does not disclose to shareholders its criteria on independence.

2.2.15. Disclosure on Material RPTs

85. To ensure that a company is being run with due regard to the interests of all its investors, it is essential to fully disclose all material RPTs and the terms of such transactions to the market individually. From this viewpoint, the following survey question was asked to the companies:

Does your company publicly disclose material RPTs at least annually?

- **Public Companies**

86. Out of 11 public companies surveyed, six companies answered "Yes" to this question, while five companies answered "No".

87. The Myanmar Accounting Standard (MAS)[42] 24 requires disclosures about transactions and outstanding balances with a company's related parties. Therefore, in principle, all companies are supposed to disclose their RPTs in their financial statements[43].

88. Out of five companies that answered "No", one company said that it discloses material RPTs only to authorities. Also, one company said that it neither has written RPT procedures nor disclose material RPTs in its annual report, and one company said that it does not disclose material RPTs since it does not understand the requirement of accounting standards. These examples indicate the necessity to improve the enforcement of disclosure regulations in terms of disclosure on material RPTs.

- **Private Companies**

89. Out of 14 private companies surveyed, one company answered "Yes" to this question. Other 13 companies answered "No" to this question, out of which five companies disclose material RPTs only to shareholders. Some companies answered that RPTs are not a concern since their companies are family-owned and minority shareholders do not exist.

2.2.16. Responsibilities of the Board

90. Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the company. Another important board responsibility is to oversee the risk management system and systems designed to ensure that the company obeys applicable laws.

91. From this viewpoint, the companies were asked whether their board fulfils the following key functions:

- *reviewing and guiding corporate strategy and major plans of action;*
- *reviewing and guiding risk management policies and procedures;*
- *reviewing and guiding annual budgets and business plans;*
- *setting objectives regarding future performance of your company;*
- *monitoring implementation and corporate performance;*

[42] According to the IFRS Foundation's website, the Myanmar Accounting Standards (MAS) and Myanmar Financial Reporting Standards (MFRS) issued by the Myanmar Accountancy Council (MAC) are substantively identical to the 2010 version of IFRS Standards.

[43] It is assumed that companies disclose information about material RPTs in their DDL and/or prospectus at least when they were listed or made public offering.

- *overseeing major capital expenditures, acquisitions and divestitures;*
- *selecting, compensating, monitoring and, when necessary, replacing key executives;*
- *ensuring a formal and transparent board nomination and election process;*
- *monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions;*
- *ensuring the integrity of the company's accounting and financial reporting systems;*
- *ensuring that appropriate systems of control for compliance with the law and relevant standards are in place; and*
- *overseeing the process of disclosure and communications.*

▪ **Public Companies**

92. All 11 public companies surveyed answered that their board fulfils all key functions listed above. Seven companies answered that they set up specialised committees[44] in order for their boards to fulfil these functions. Most of them have committees on audit, nomination and remuneration, and some have committees on risk management and/or corporate governance.

93. The companies were also asked whether their board treats all shareholders fairly when board decisions may affect different shareholder groups differently, and all 11 public companies surveyed answered "Yes" to this question.

▪ **Private Companies**

94. Responses from 14 private companies surveyed are shown in the below table. Although some companies answered "No" to most of the questions, it is shown that the board of most of the private companies surveyed fulfils all key functions listed in the table. It should be noted, however, that some companies said that these key functions are fulfilled by the board together with senior management staff. It is presumed that a board which consists of only the founder and her/his family members may not be able to fulfil its functions without the help of senior managers.

[44] This does not necessarily mean that other four public companies do not have specialised committees since the questionnaire does not explicitly ask companies whether they have specialised committees.

Table 2.4. Private companies' answers to the question on the responsibilities of board

Does your board fulfil the following key functions?	Yes	No
reviewing and guiding corporate strategy and major plans of action	12	2
reviewing and guiding risk management policies and procedures	11	3
reviewing and guiding annual budgets and business plans	13	1
setting objectives regarding future performance of your company	12	2
monitoring implementation and corporate performance	12	2
overseeing major capital expenditures, acquisitions and divestitures	13	1
selecting, compensating, monitoring and, when necessary, replacing key executives	12	2
ensuring a formal and transparent board nomination and election process	11	3
monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions	10	4
ensuring the integrity of the company's accounting and financial reporting systems	14	0
ensuring that appropriate systems of control for compliance with the law and relevant standards are in place	12	2
overseeing the process of disclosure and communications	12	2

95. The companies were also asked whether their board treats all shareholders fairly when board decisions may affect different shareholder groups differently, and all 14 private companies surveyed answered "Yes" to this question.

2.2.17. Independent Non-Executive Board Members

96. Independent non-executive board members enable the board to exercise independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial reporting, the review of RPTs, nomination of board members and key executives, and board remuneration. Independent non-executive board members can provide additional assurance to investors that their interests are safeguarded. From this viewpoint, the following survey question was asked to the companies:

Does the board of your company have a sufficient number of independent non-executive board members?

- **Public Companies**

97. Out of 11 public companies surveyed, nine companies answered "Yes" to this question, while two companies answered "No". Number and ratio of independent directors are shown in the below table.

Table 2.5. Number and ratio of independent directors in public companies

	Number of Companies
One independent director	2
Two independent directors	2
Three independent directors	3
More than three	2

	Number of Companies
Below 10%	3
Between 10% and 50%	3
Above 50%	2
N/A[45]	1

98. It is also worth noting that the average number of shareholders among companies which answered "Yes" is 4 594, while the average among companies which answered "No" is 54. It is assumed that companies are under more pressure to appoint independent directors when the number of shareholders – in particular, minority shareholders – is larger.

99. Although majority of public companies surveyed have independent directors, companies seldom define and disclose what kind of elements constitutes independence as described in 2.2.14. This fact gives rise to suspicion that there is no clear difference between independent non-executive directors and non-independent executive directors and companies do not fully utilise functions of independent directors. This holds true for the private companies surveyed.

100. Currently no regulations define independence of board members; however, the new Companies Law stipulates that the DICA may prescribe the qualifications, rights and duties of independent directors by notification[46]. It should be noted by Myanmar authorities and companies that, for example, (i) people who worked for the company in the past, (ii) family members of board members, (iii) directors who hold executive positions in other companies which have strong relationship with the company (for example, a parent company or banks), and (iv) major shareholders will not be regarded as independent from the viewpoint of global standards.

- **Private Companies**

101. Out of 14 private companies surveyed, four companies answered "Yes" to this question, while 10 companies answered "No". Number and ratio of independent directors are shown in the below table.

Table 2.6. Number and Ratio of Independent Directors in Private Companies

	Number of Companies
One independent director	3
Two independent directors	0
Three independent directors	0
More than three	1

	Number of Companies
Below 10%	0
Between 10% and 50%	3
Above 50%	1
N/A	0

2.2.18. Board Members' Access to Information

Board members require relevant and timely information in order to support their decision-making. Particularly, non-executive board members do not typically have the same access

[45] One company answered the number of independent directors but did not answer the number of board members.
[46] Section 175 (h). This notification has not yet been published by the DICA.

to information as key managers within the company. The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company. From this viewpoint, the following survey question was asked to the companies:

Do board members of your company have access to accurate, relevant and timely information in order to fulfil their responsibilities?

- **Public Companies**

102. All 11 public companies surveyed answered "Yes" to this question. Two companies mentioned that their board members have access to timely information by using Social Networking Service (group chat).

103. In this respect, the new Companies Law stipulates that a board member may inspect the books and records of the company at all reasonable times[47].

- **Private Companies**

104. Out of 14 private companies surveyed, 13 companies answered "Yes" to this question, while one company answered "No". Several companies which answered "Yes" said that board members have access to necessary information since they are owners of the company and oversee all operations in a timely manner.

[47] Section 161 (a)

3. Recommendations

105. Governance requirements in Myanmar have been substantially strengthened by the new Companies Law. Myanmar authorities are expected to effectively implement it so that corporate governance practices in Myanmar companies would be raised to the level of the revised Law's expectation. It should be noted that this report has found a gap between the revised Law and the practices in the area of notification to shareholders, shareholder proposal rights, and sound management of RPTs, among others. Those weaknesses would be significant when benchmarked against the G20/OECD Principles of Corporate Governance.

106. Effective implementation would be necessary also for disclosure regulations. Further efforts by Myanmar authorities are needed to encourage public companies to comply with the disclosure requirements[48] and to make their financial statements publicly available.

107. Myanmar authorities should also be aware that some challenges pointed out in this report – disclosure of major shareholdings and disclosure on remuneration of board members and key executives, among others – would be solved by preparing an appropriate format for an annual report and half-yearly report and making it clear that public companies have to publicly disclose these information not only when they were listed or made public offering but also subsequently and periodically.

108. In the process of improving corporate governance in Myanmar, soft law approaches would serve as a useful complement to legislation and regulation. This could limit the regulatory burden on Myanmar companies by appropriately utilising non-binding ("comply or explain" type[49]) instruments such as corporate governance codes, which rely on market discipline through disclosure[50].

109. It is expected that a Council which consists of Myanmar authorities, representative companies, the OECD, and other international experts and relevant institutions will be established in an effort to provide a policy forum to discuss the issues addressed in this report.

[48] Questions from 2.2.8 to 2.2.15

[49] The G20/OECD Principles of Corporate Governance describes that "the legislative and regulatory elements of the corporate governance framework can usefully be complemented by soft law elements based on the "comply or explain" principle such as corporate governance codes in order to allow for flexibility and address specificities of individual companies". A typical example of such tools is corporate governance codes established by stock exchanges.

[50] In the stocktaking report submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative, Myanmar authorities pointed out that one of their main challenges is that there is no tailor-made framework for corporate governance in Myanmar. See Annex II for the details.

Annex I (Significant Changes Introduced under the New Companies Law[51])

Easier incorporation of companies: The law will allow companies with a single shareholder and single director to be established. A single individual can have complete control of the company, and still enjoy the separate liability of the corporate entity. This will make the company as a business entity a more attractive option for businesses, entrepreneurs and start-ups, and encourage more businesses to move into the formal sector. In addition, the law allows for the incorporation of various types of companies such as public companies and companies limited by guarantee. Companies incorporated overseas which are carrying on business in Myanmar are also required to be registered under the new law (as "overseas corporations") and will have specific reporting requirements. Business associations will continue to be able to register under the law. The procedure for registering a company has been simplified and streamlined. Applications for registration of companies will be based on a single form and do not require authentication signatures. With the introduction of a new electronic registry system in the near future, the process for company formation, filings and due diligence on companies will significantly improve.

Company constitution to replace Memorandum and Articles of Association: Under the new Companies Law, a company's Memorandum and Articles of Association will be replaced by a single document called a "company constitution". The company constitution, together with the provisions in the Companies Law, will provide all the processes and provisions necessary for the internal decision-making and capital management of a company. A new model constitution will be provided by DICA for private companies limited by shares. However, if a company wishes to tailor certain provisions for itself, it can adopt its own company constitution. The Memorandum and Articles of Association of existing companies will be deemed to be the new company constitution and will continue to have effect (to the extent they are not inconsistent with the new law). Importantly, the new law gives companies unlimited capacity to carry on any business and a company is no longer restricted by the business objects clause in its Memorandum of Association. The objects clause, which is required under the existing Companies Act, was often used by various regulators as a means of vetting proposed business activities of companies. For existing companies, the business objects expressed in the Memorandum of Association will continue to apply until the end of the transition period (12 months from the date of commencement of the new law). The objects clause will be deemed to have been removed after this unless a special resolution is passed to maintain it, and the resolution is lodged with DICA.

No more par value for shares and authorised capital: Shares issued by companies will no longer have a fixed par value. This means companies will no longer need to specify a fixed value for shares on registration. The directors now have the discretion to determine the appropriate value for the shares each time they are issued. Consequently, companies are no longer bound by any authorised share capital limit, and are no longer required to specify their authorised capital in the company constitution. Any provision in a company's existing Memorandum or Articles of Association specifying the company's authorised share capital (and dividing that share capital into shares of a fixed par value) will be automatically repealed.

[51] Excerpt from the stocktaking report submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative

Foreign ownership threshold in companies: In one of the most important changes, the new Companies Law will now allow foreign ownership of up to 35% in local companies, before the companies are classified as "foreign companies" under the law. This is a significant liberalisation measure as foreign investors can now own up to 35% of the equity in Myanmar owned companies (directly or indirectly) without changing the company's status to a "foreign company". There are no restrictions on the transfer of shares in companies between local and foreign shareholders, but any change in a "foreign company" status of a company will need to be notified to DICA and also reported in a company's annual return. The "foreign company" status will be disclosed on the electronic registry and updated as the status changes.

Every company must appoint a Myanmar resident director: The new law will now require all companies established in Myanmar to appoint at least one director who is "ordinarily resident" in Myanmar. A person will be considered to be ordinarily resident if they hold permanent residency or is resident in Myanmar for at least 183 days in each 12 month period. The period of residency will be calculated from the date of incorporation of a company (or the date of commencement of the new law for existing companies). Public companies must now appoint at least 3 directors, and at least one of the directors must be a Myanmar citizen who is ordinarily resident in Myanmar. The law allows companies a transitional period of one year to meet these new director residency requirements.

Branch offices to be registered as Overseas Corporations: Overseas registered companies which wish to carry on business in Myanmar must register with DICA under the new Companies Law as "overseas corporations". Whether a company is carrying on business will depend on the circumstances of the company and its activities in Myanmar. The Companies Law sets out a list of activities which will not cause a foreign registered company to be regarded as carrying on business in Myanmar. The new Companies Law now contains detailed requirements for the registration and filing of documents by such "overseas corporations" with DICA. All overseas corporations are also required to appoint a person who is ordinarily resident in Myanmar to act as its representative in the country. The residency test for authorised representatives is the same as for resident directors (so they must reside in Myanmar for at least 183 days in each 12-month period).

Lower compliance burden for small companies: Small companies will no longer be required to hold annual general meeting (AGM) or prepare audited financial statements, unless required by their shareholders, DICA or their company constitution. Small companies are defined as companies with no more than 30 employees and an annual revenue in the prior financial year of less than 50,000,000 Kyats in aggregate. Public companies and their subsidiaries are excluded from this exemption and must still comply with AGM and audit requirements. Companies are no longer required to hold physical general meetings, to reflect the changing nature of business communication and technology today. Companies and their board of directors may approve written resolutions in place of meetings. Shareholders must unanimously sign off on a resolution for it to be effectives as an ordinary resolution. Companies with one shareholder can pass a resolution by that shareholder signing the written resolution. This procedure may be used to pass both ordinary and special resolutions. Similarly, the board of directors can pass a directors' resolution by all directors signing the resolution without holding a physical meeting. Companies with a single director may pass a director resolution by that sole director signing the resolution.

Easier decision making for companies: To make it easier for companies to do business daily, formalities such as company seals have been removed. Company seals are now optional, provided that the company's constitution does not require the company to have a seal. Existing companies may amend their constitutions to remove any requirement for a

company seal. A company can sign documents (including contracts) without using a company seal by having two directors, or a director and a secretary sign the document. For a company with a single director, documents may be executed by that sole director. The Companies Law now specifically provides that a person dealing with a company is entitled to assume that documents signed in such a manner have been properly executed, unless the person knew or suspected at the time of dealing that this was not the case.

New "Solvency Test" safeguards: While providing more flexibility to companies, the Companies Law also introduces certain safeguards to protect third parties doing business with companies and the rights of creditors of companies. Directors of companies must ensure that the company is solvent when the company undertakes a declaration of dividend, reduction of capital, provision of financial assistance, redemption of preference shares and share buybacks. The solvency of a company will be assessed based on a new 'solvency test' of whether a company is able to pay its debts as they become due in the normal course of business and the company's assets exceed its liabilities. Where there is a breach of this solvency test, the directors will face personal liability for losses of the company and may face criminal sanctions.

Annex II (Challenges and Opportunities Identified by Myanmar Authorities[52])

Main challenges

a No tailor-made framework for corporate governance: Until now, there is no particular law regarding the corporate governance. Some provisions can only be found in the Companies Law. In order to raise the level of corporate governance in Myanmar companies and enable them to access capital needed for investment, it is urgent to establish corporate governance framework which is compatible with global standards.

b Insufficient knowledge about corporate governance among companies: In Myanmar, most companies are family-owned. In order to increase the transparency of management and to create a more equitable, efficient and sound company with the market confidence and business integrity, it is needed to enhance the corporate performance. As the corporate governance culture is not well developed among Myanmar companies, the Government is committed to take forward the corporate governance by providing knowledge and raising awareness.

c Insufficient corporate disclosure practices: As mentioned above, listed companies and certain public companies are subject to periodic and ad-hoc disclosure. However, nearly half of the public companies that are subject to this disclosure requirement have not filed disclosure documents. It is necessary to continue efforts to improve enforcement and corporate disclosure practices of the companies so that clear, concise and relevant information about their businesses will be provided shareholders and potential investors.

d Needs for building a track record of public offerings: End of last year, one company has achieved to raise funds from the public equity market (YSX). Further efforts are needed to promote the use of public equity market by listed companies and potential listed companies.

Main opportunities

a Enactment of Myanmar Companies Law on 6th December 2017: In the Myanmar Companies Law, the provisions that can enhance the corporate governance such as directors and their powers and duties, member rights and remedies, financial reports and etcetera are included.

b Government's support for the corporate governance development in Myanmar: The Government has been trying to provide a strong legal framework for promoting corporate governance by many ways. Furthermore, the Government is cooperating with the stakeholders for achieving its objectives.

c Support from the international organizations such as OECD and IFC: OECD and the Securities and Exchange Commission of Myanmar are cooperating and coordination for the Corporate Governance Code. Likewise, IFC and the Securities and Exchange Commission of Myanmar are striving to emerge the Institute of Directors in Myanmar.

[52] Excerpt from the stocktaking report submitted to the fifth meeting of the OECD-Southeast Asia Corporate Governance Initiative

Annex III (Summary of Companies' Answers to the Questionnaire)

Questionnaire	Public Companies	Private Companies
2.2.1. Does your company provide shareholders – at least 14 days before the general shareholder meeting – with information concerning the date, location and agenda of the general shareholder meeting?	Yes: 10 No: 0 N/A: 1	Yes: 4 No: 0 N/A: 10
2.2.2. Do the processes and procedures for general shareholder meetings of your company allow for equitable treatment of all shareholders?	Yes: 10 No: 0 N/A: 1	Yes: 4 No: 0 N/A: 10
2.2.3. Does your company provide shareholders the opportunity to ask questions to the board?	Yes: 10 No: 0 N/A: 1	Yes: 4 No: 0 N/A: 10
2.2.4. Does your company provide shareholders (with certain holding ratio) the opportunity to place items on the agenda of general shareholder meetings?	Yes: 1 No: 9 N/A: 1	Yes: 4 No: 0 N/A: 10
2.2.5. Does your company facilitate effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members?	Yes: 9 No: 1 N/A: 1	Yes: 2 No: 2 N/A: 10
2.2.6. (1) Does your company enable shareholders to vote in absentia?	Yes: 0 No: 11 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.6. (2) Does the vote in absentia have equal effect as the vote in person?	Yes: 0 No: 0 N/A: 11	Yes: 0 No: 0 N/A: 14
2.2.7. Does your company approve and conduct RPTs in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders?	Yes: 10 No: 1 N/A: 0	Yes: 3 No: 11 N/A: 0
2.2.8. (1) Does your company publicly disclose financial statements – including the balance sheet and the profit and loss statement – at least annually?	Yes: 10 No: 1 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.8. (2) Are financial statements audited by an external auditor before being disclosed?	Yes: 11 No: 0 N/A: 0	Yes: 13 No: 1 N/A: 0
2.2.9. Does your company publicly disclose its major shareholders and their holding ratio at least annually?	Yes: 6 No: 5 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.10. (1) Does your company publicly disclose remuneration of board members at least annually?	Yes: 3 No: 8 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.10. (2) Does your company publicly disclose remuneration of key executives at least annually?	Yes: 3 No: 8 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.11. Does your company publicly disclose information about board members' qualification?	Yes: 6 No: 5 N/A: 0	Yes: 2 No: 12 N/A: 0

Questionnaire	Public Companies	Private Companies
2.2.12. Does your company publicly disclose information about selection process of board members?	Yes: 0 No: 11 N/A: 0	Yes: 0 No: 14 N/A: 0
2.2.13. Does your company publicly disclose information about other company directorships of board members?	Yes: 3 No: 8 N/A: 0	Yes: 1 No: 13 N/A: 0
2.2.14. Does your company publicly disclose whether board members are regarded as independent by the board?	Yes: 2 No: 9 N/A: 0	Yes: 1 No: 13 N/A: 0
2.2.15. Does your company publicly disclose material RPTs at least annually?	Yes: 6 No: 5 N/A: 0	Yes: 1 No: 13 N/A: 0
2.2.16. Does the board of your company fulfil certain key functions, including:		
• reviewing and guiding corporate strategy and major plans of action	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
• reviewing and guiding risk management policies and procedures	Yes: 11 No: 0 N/A: 0	Yes: 11 No: 3 N/A: 0
• reviewing and guiding annual budgets and business plans	Yes: 11 No: 0 N/A: 0	Yes: 13 No: 1 N/A: 0
• setting objectives regarding future performance of your company	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
• monitoring implementation and corporate performance	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
• overseeing major capital expenditures, acquisitions and divestitures	Yes: 11 No: 0 N/A: 0	Yes: 13 No: 1 N/A: 0
• selecting, compensating, monitoring and, when necessary, replacing key executives	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
• ensuring a formal and transparent board nomination and election process	Yes: 11 No: 0 N/A: 0	Yes: 11 No: 3 N/A: 0
• monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions	Yes: 11 No: 0 N/A: 0	Yes: 10 No: 4 N/A: 0
• ensuring the integrity of the company's accounting and financial reporting systems	Yes: 11 No: 0 N/A: 0	Yes: 14 No: 0 N/A: 0
• ensuring that appropriate systems of control for compliance with the law and relevant standards are in place	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0

Questionnaire	Public Companies	Private Companies
• overseeing the process of disclosure and communications	Yes: 11 No: 0 N/A: 0	Yes: 12 No: 2 N/A: 0
2.2.17. Does the board of your company have a sufficient number of independent non-executive board members?	Yes: 9 No: 2 N/A: 0	Yes: 4 No: 10 N/A: 0
2.2.18. Do board members of your company have access to accurate, relevant and timely information in order to fulfil their responsibilities?	Yes: 11 No: 0 N/A: 0	Yes: 13 No: 1 N/A: 0

4. References

OECD (2015), G20/OECD Principles of Corporate Governance, OECD, Paris

OECD (2017), Methodology for Assessing the Implementation of the G20/OECD Principles of Corporate Governance, OECD, Paris

www.oecd.org/corporate