

# Client Advisory

## Compliance Requirements under the new Companies Act

### **In Brief**

The new Companies Act (the “Act”) became effective on 1 January 2024 replacing the previous Companies Act (the “Previous Act”).

The Act generally maintains the compliance structure established under the Previous Act. As a major difference, the new Act strengthens the enforcement regime allowing the Registrar of Companies (ROC) to levy fines for non-compliance of the Act.

This brief provides the compliance requirements stipulated under the new Act highlighting the changes introduced under the new regime. Unless specified otherwise, the compliance requirements stated in this brief are applicable to locally



incorporated companies. Compliance requirements of re-registered entities are separately provided in this brief.

Compliance requirements are to be further detailed in the regulations made pursuant to the Act. The ROC is required to publish the regulations within 90 days (before end of March 2024).

## **Annual Compliance**

The following compliance requirements must be met by all companies annually:

- Conducting the annual general meeting (AGM)
- Submission of the directors' report to the Registrar of Companies (ROC)
- Submission of annual accounts to ROC
- Holding a minimum of four board meetings

## **Annual General Meeting**

1. AGM has to be held once a year by all companies (except for single shareholder companies).
2. For single shareholder companies, signed resolution of the shareholder suffices for the purposes of the AGM.
3. The following shall be conducted at the AGM:
  - Tabling and passing of the directors' report, annual accounts and the auditor's report (where required)
  - Appointment/election of directors (where required)
  - Appointment of the external auditor and determining the fee (if an external auditor is required)
  - Determining the dividend declaration



4. In a private company, a notice period of at least 14 days must be given to each shareholder and electronic mediums can be used to conduct the AGM.
5. The Act does not provide a specific deadline to hold the AGM, however, as the documents passed in the AGM have to be submitted along with the Final Income Tax Return – the effective deadline for the AGM is 30 June (if the income tax return has to be filed by the company).
6. The requirement to hold the AGM is not a new requirement. The Previous Act also mandated all companies to hold the AGM, pass the director's report and the annual accounts at the AGM.

## **Directors' Report**

1. The annual directors' report has to be prepared by each company and tabled at the AGM.
2. The details to be included in the report are as follows:
  - Details of the company's operations
  - Principal business activities of the past year
  - Amount (if any) paid or proposed to be paid by way of dividend
  - Amount (if any) to be set out as reserves
  - Solvency test as prescribed under the regulation (if dividend is proposed to be paid)
  - A directors declaration confirming that the details of the company stated in the business register are accurate
  - Any other information as determined by the ROC.
3. The directors' report must be submitted to the ROC within 15 days from the AGM or within any other deadline stipulated by the ROC.



## **Annual Accounts and Records**

1. The annual accounts of the company must be presented to the shareholders in the AGM.
2. The annual accounts must be submitted to the ROC within 15 days from the AGM or within any other deadline stipulated by the ROC.

## **Auditor's Report**

1. Companies which meet the requirements stipulated under the regulation is required to appoint a licensed external auditor.
2. As the regulation has not been published yet, the companies exempt from audit requirements are yet to be established.
3. Where a company has appointed an external auditor, the auditor's report must be prepared and presented in the AGM.

## **Board Meetings**

1. The Act requires a minimum of four board meetings to be held annually.
2. The quorum for board meetings is more than 50% of the directors. A company may stipulate a higher quorum.
3. Decisions of the Board of Directors can be passed without holding a meeting if more than 50% of the directors approve such a decision.
4. Meetings may be conducted by electronic mediums.
5. For companies with a sole director, a resolution signed by the director will be deemed as a decision of the Board of Directors.



## Corporate Registers

1. Each company is required to maintain the following registers:
  - Register of members (except for public companies)
  - Register of directors
  - Register of charges
  - Register of significant beneficial owners
2. The ROC is empowered to impose fines on the company and the directors where the registers are not maintained in accordance with the Act.

### **Register of members**

1. The register of members includes the details of the current shareholders and the previous shareholders for a period of 5 years.
2. Changes to the shareholding should be updated in the register and the inclusion of a member in the register is legally deemed as evidence of the ownership of the share.
3. Upon receipt of the share transfer documentation, the company is required to register the new shareholders within 30 days from receipt of the documents or refuse the registration of the share transfer within the same period.
4. Unless stated otherwise in the AOA, the time of transfer of shares would be deemed to be the time of registration of shares in the register.

### **Register of directors**

1. The details of the directors are required to be maintained in the register of directors. Previous directors appointed in the past 5 years are also to be included in the register.
2. For companies with sole directors, the register should state that the company has a sole director.



### **Register of charges**

1. All charges created over the shares of the companies, shares of subsidiaries, properties or undertakings of the company or any other charges prescribed in the regulation has to be informed to the ROC within 30 days from the creation of the charge.
2. Company is required to maintain a register of charges created over the shares and property.

### **Register of significant beneficial owners**

1. Companies are required to maintain a register of significant beneficial owners (SBOs) which includes information of the SBOs of body corporates registered as shareholders of the company.
2. Company has an overarching responsibility to identify SBOs even where the shareholders themselves have not voluntarily registered the information. This is applicable if 25% voting rights at the AGM or 25% of the dividend declarations are attributable to body corporates who are shareholders.

### **Share certificate**

Upon registration of a shareholder in the register of members, a share certificate must be issued to the shareholder.

The requirements to maintain the register of members and directors was included in the Previous Act, however, such maintenance was not highly regulated by the ROC.



## Registrations with the ROC

1. The Act requires changes to the company details and personnel to be informed to the ROC.
2. The following periods are provided in the Act to inform/register the changes with the ROC. Unless stated otherwise, the period is applicable from the date the following has been made effective.

<b>Change</b>	<b>Time Period</b>
Changes to the MOA and AOA	30 days
Changes to the Registered Address and Service Address	Within a period stipulated in the regulation
Changes to the directors or managing director	15 days
Changes to the company secretary	15 days
Changes to the authorised capital	30 days
Share transfers	15 days
Creation of charges over shares or property	30 days
Release of charges over shares or property	30 days
Information of UBOs	30 days from the receipt of information
Directors' report	15 days from the AGM or any other period stipulated by the ROC



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Annual accounts	15 days from the AGM or any other period stipulated by the ROC
Appointment of liquidator	7 days from the acceptance by the liquidator

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## Applicable Fees

1. The Act abolishes the requirement to pay an annual fee which was earlier set at MVR2,000.
2. Under the Act, private companies, public companies and local authority companies are required to pay a registration fee of MVR2,000 during the incorporation of the company.
3. Further, a service fee of MVR100 is to be levied for the following applications made with the ROC.
  - Registering changes to the MOA or AOA
  - Registering changes to the registered address or service address
  - Releasing copies of the MOA and AOA to shareholders
  - Registering changes to the authorised capital
  - Registering changes to members / shares
  - Registering changes to the directors / managing director / company secretary
  - Seal registration
  - Reservation of names / extension of reservation period (for 7 days)
4. The Act also permits the ROC to levy fees to release detailed information of companies from the business register. Information available without a fee is stipulated in the Act.





## **Service Address**

1. Companies may register a service address in addition to the registered address.
2. Upon registration, service address will be utilised by the ROC and other third parties to send notices and documents to the company.

## **Inactive companies**

1. The Act creates a requirement for ROC to classify companies as inactive where:
  - 3 months have elapsed without the minimum requirement for the board of directors.
  - 1 year has elapsed without filing the declaration to be submitted with the director's report.
  - 2 years have elapsed without filing the annual accounts and reports.
  - 1 year has elapsed without paying any outstanding penalties imposed under the Act.
2. A company may fulfil the pending obligations to remove the company from the inactive companies register.
3. The ROC is to initiate winding up procedures for companies listed as inactive for 2 years.



## Penalties

1. The ROC is empowered to impose fines for breaches of the Act in the following manner:
  - **Companies:** MVR2,000 for each violation
  - **Managing director & other directors:** MVR1,000 for first violation, MVR2,000 for second violation and MVR5,000 for third and subsequent violations
  - **Third parties:** MVR1,000 for first violation, MVR2,000 for second violation and MVR5,000 for third and subsequent violations
2. The following violations are prescribed in the Act and is applicable to companies and directors (as shown below):

Violation	Company	Directors
Failure to register changes to the MOA and AOA	✓	N/A
Failure to change company name as directed by ROC	✓	✓
Failure to maintain the corporate registers	✓	✓
Failure to register changes to the director/ company secretary	✓	N/A
Failure to register the minimum required number of directors as directed by the ROC	✓	N/A
Failure to register a managing director/ company secretary as directed by the ROC	✓	N/A
Failure to register changes to authorised capital	✓	✓
Breaches of share transfer procedures	✓	✓



Failure to record changes to the register of members	✓	✓
Failure to register changes to the charges of the company	✓	N/A
Failure to submit information of SBOs	✓	✓
Breach of the responsibility to seek, maintain and validate information of SBOs	✓	✓
Failure to register changes to the information of re-registered companies and company's agent	✓	N/A
Failure to submit the directors' report and annual accounts	✓	N/A

3. In addition to the above the managing director is separately responsible for the submission of the directors' report and annual accounts to the ROC, failing which fines can be levied separately on the managing director.
4. Third parties can be fined for the following violations:
  - Failure of the shareholder to register the details of the SBO with the company.
  - Failure of the SBO to register their details with the company.
  - Failure of the shareholder or SBO to inform the company of the changes to the details of the SBO.
  - Failure of liquidator to inform the ROC of their appointment within 7 days from appointment.
5. The Act also enables the ROC to impose fines between MVR1,000 to MVR100,000 for non-compliance of any direction issued by the ROC.
6. Further, criminal penalties are prescribed for parties who provide misinformation to the ROC or submits falsified documents or obstructs investigations carried out by the ROC.



## **Re-registered Companies**

1. Foreign companies incorporated abroad can be re-registered in Maldives similarly to the Previous Act. Such companies are required to provide the details of the company (including details of members and directors), constitutive documents to the ROC in accordance with the Act.
2. Any changes to the information of the company are to be informed to the ROC within 30 days.
3. Re-registered companies are required to appoint a company agent who is resident in Maldives. The company agent is accountable to the ROC for all compliance requirements of the company and will personally be responsible for all actions taken against the company.
4. Any changes to the company agent should be informed to the ROC within 7 days.

## **Compliance with the Act**

The Act requires already incorporated companies and re-registered companies to comply with the Act within 1 year from the effective date (before the end of 2024).

Requirements applicable to the directors as stipulated in the Act will also become effective to existing directors within the above period.



## Contact us

If you have any questions or need our assistance, please contact your principal advisor or any one of the following members of our team.

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Thaail's experiences at our firm include a variety of matters including drafting commercial agreements, advising and assisting on corporate-related matters. Thaail takes a special interest in company law and regulatory disputes.

# About us

CTL Strategies is a multi-disciplinary law firm registered in the Maldives. We advise Fortune 500, FTSE 100 and S&P 500 companies, the world's top hotel chains, some of the Big Four audit firms, the world's leading not-for-profit organisations, local and international banks, financial institutions, government bodies, and high-net-worth individuals investing in all sectors and industries in the Maldives.

We are ranked in the 2023 edition of Chambers Global Guide, and as a Highly Recommended Firm by Asia Law Profiles in the area of General Business Law.

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