



*Myanmar Companies Law 2017 ("MCL") has introduced a special corporate approval procedure for "related party transactions" into the Myanmar legal system.*

We are a network of leading law and tax advisory firms with offices in Cambodia, Indonesia, Laos, Myanmar and Vietnam.

Our general areas of practice are corporate, finance, licensing and disputes.

Our principal specialized areas of practice are energy, infrastructure, real estate and construction, telecom and taxation.

There are three things you need to know about our approach:

1. We deliver the ultimate in ground connectivity.
2. Our quality is trusted by the most discerning.
3. We never give up.

## HOW THE NEW COMPANIES LAW AFFECTS GROUP FINANCING TRANSACTIONS

Myanmar Companies Law 2017 ("MCL") has introduced a special corporate approval procedure for "related party transactions" into the Myanmar legal system. While such type of transactions are often subject to particular scrutiny under corporate governance laws in many jurisdictions, there are a number of peculiarities to be followed under the MCL, and they are summarised below.

### What can be a related party transaction

In simple terms, a related party transaction is defined as a corporate action undertaken with the purpose of providing a benefit to an associated company or director.

Examples could include granting of loans to, or guarantee for the benefit of related parties. Related parties of a company may include its directors and persons who control such company.

It is important to note that MCL also includes provision of any other kind of financial benefit to a related party within potential scope of a related party transaction, meaning that the range of agreements that could fall under this category could be quite broad.

The chart below provides for some further examples of the transactions that may fall under this category.

### Highlights of this note

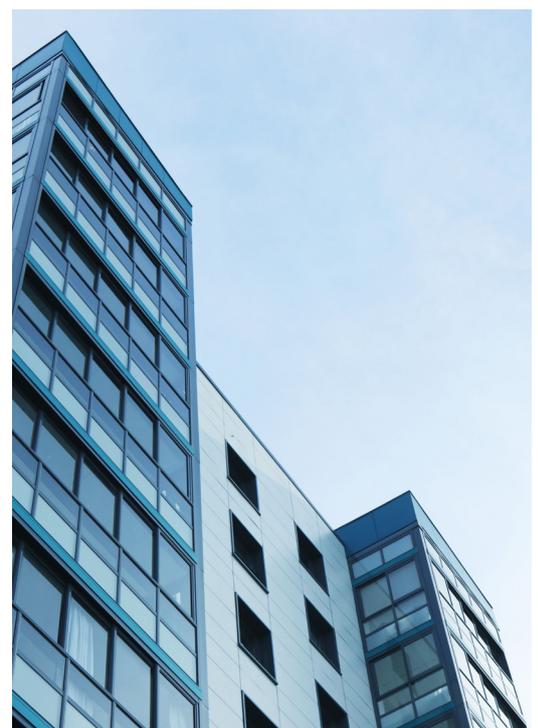
- ▶ What can be a related party transaction
- ▶ Approval procedure
- ▶ Loan or guarantee to a holding or sister company
- ▶ Loan or guarantee for a company with the same director
- ▶ Practical observations and recommendations

### BANKING AND FINANCE MYANMAR UPDATE 2018



Get to the point.

<http://bit.ly/2x1bLmv>



Transaction	Provided by the Company to
Company paying remuneration or other benefits for services as a director or in any other capacity	A director or a director's related party
Company compensates for loss of office	A director or a former director
Company provides a loan	A director or a related party
Company provides a guarantee for a debt	(Debt of) a director or a related party
Company enters into any contract to do any of the above-mentioned transactions	A director or a related party
Providing any other kind of financial benefit not otherwise regulated under the MCL	A director or a related party

**Approval procedure**

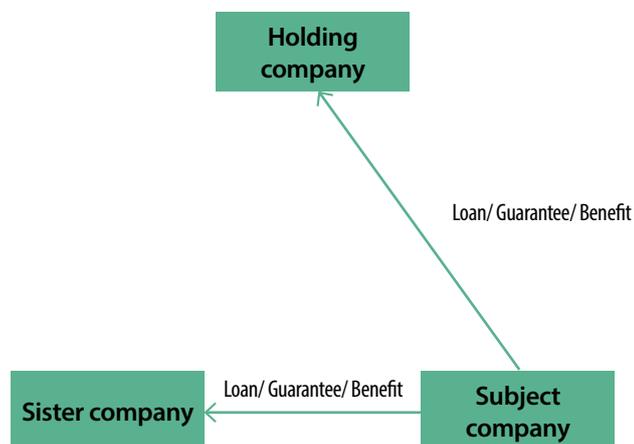
The procedure of approval of such transactions includes the following steps:

- i. The board must pass a resolution authorizing the related party transaction.
- ii. The particulars of the transaction must be entered in the register of interests.
- iii. Directors who vote in favour of authorizing the transaction must certify (with grounds) that it is in the best interest of the company, reasonable and on arms' length basis.
- iv. The particulars of the transaction must be disclosed to members at the next AGM.
- v. The company must file with the Registrar a proposed notice to convene a general meeting for approving the transaction. This must be accompanied by a proposed explanatory statement setting out information material to the transaction. The Registrar must determine within 28 days whether the notice may be released to members, after which time the proposed notice is deemed approved.
- vi. Following the expiry of 21-day notice-period (unless waived by all members) – passing of approving resolution by the shareholders meeting (special voting thresholds apply).
- vii. The company must lodge a copy of the resolution with the Registrar within 14 days after it is passed.

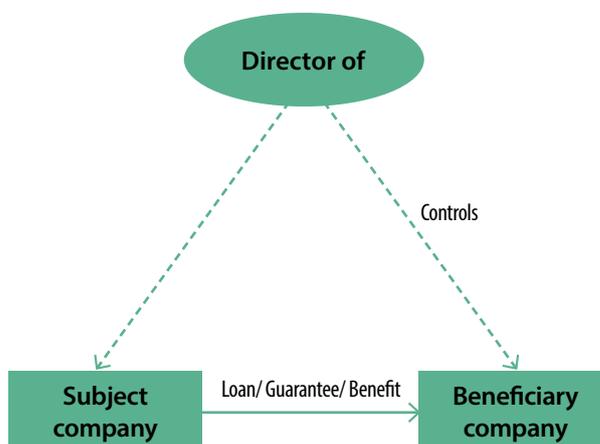
In terms of loans, guarantees and any other kind of financial benefit that could be a related party transaction, the following diagrams provide examples of where the need for a related party approval may arise:



**1. Loan or guarantee to a holding or sister company**



**2. Loan or guarantee for a company with the same director**



## Practical observations and recommendations

It is important that as a practical matter the MCL provisions relating to the related party transactions have not yet been implemented in their entirety yet. For example, the system of online filings that is required to be used as part of the approval process for the related party transactions, has not yet become operational.

Thus, at the moment it is practically not possible to make related party transaction filings online, and parties may consider discussing with DICA regarding the possibility of making manual filings in satisfaction of the requirements under the MCL.

Going forward, it is strongly advisable for all companies to carefully verify whether any of the proposed new transactions fall under the definition of a related-party transaction, and thus requiring a lengthy approval process.

This may be particularly relevant to large holdings and groups of companies controlled by a single shareholder or several beneficiaries. To facilitate such analysis, it may be helpful for such holdings to have a fresh look at the shareholding structure and composition of boards of directors (and, to the extent possible, consider similar parameters of frequent counterparties) to identify the scope and types of potential transactions that may be classified as related party transactions.

## RELATED VDB LOI PUBLICATIONS

- ▶ [New Rules on Sanitizing Bank Overdrafts in Effects](#)

**DOWNLOAD OUR EXPERIENCE  
HERE**



<http://bit.ly/2RcuYoh>

## CONTACT



**Edwin Vanderbruggen**  
Senior Partner  
edwin@vdb-loi.com

Edwin is the senior partner of VDB Loi and a leading foreign legal advisor living in Myanmar since 2012. A frequent advisor to the Government on transactions and privatizations in energy, transportation and telecom, he is widely recognized for his "vast knowledge" (Legal 500) and his ability "to get difficult things through the bureaucracy" (Chambers, 2016). He advises international financial institutions on their largest Myanmar transactions, oil and gas supermajors, a greenfield multi-billion US\$ telecom project and the Japanese Government on the Thilawa SEZ. He assisted two newly licensed foreign banks setup in Myanmar, acted for the sponsor of an 800MUS\$ urban infrastructure PPP project and worked on 6 out of 7 power deals inked in 2016.

## YANGON

Level 10, Unit 01-05, Junction City Office Tower,  
Corner of Bogyoke Aung San Road and 27<sup>th</sup> Street,  
Pabedan Township  
T +951 9253752~6  
F: +951 9253758

## BANKING AND FINANCE TEAM

VDB Loi has created a practice team to support the partners comprising foreign and locally qualified lawyers and regulatory advisers work exclusively on banking and finance matters.



**Maxim Kobzev**  
Team Leader  
maxim.kobzev@vdb-loi.com

Senior banking and finance lawyer, Maxim has over 15 years of practical experience advising leading international banks and investors in emerging markets. Prior to joining VDB-Loi, Maxim was a member of a leading infrastructure and finance practice with a large international law firm.

## NAY PYI TAW

Nilar #2, Business Center, Park Royal Hotel Nay Pyi Taw,  
Jade Villa no. 13/14 Hotel Zone,  
Dekhina Thiri Township  
T: +95 678 106089  
F: +95 678 108 092