

Electronic Signatures in Myanmar



In light of the current COVID-19 situation and the accompanying travel and commuting restrictions, the electronic signature gains importance beyond simple convenience. Even though Myanmar's laws theoretically recognize the validity of electronic signatures at least for some transactions, the reality is unfortunately still different.

With this article, we would like to present the legal and practical situation in Myanmar concerning the remote signing of documents such as written shareholders' and board of directors' resolutions and in particular the possibility of electronic signatures.

We will further outline alternative solutions for the remote execution of documents in a generally accepted manner.

1. Electronic Records and Electronic Signatures in Myanmar

Whether written resolutions of a company, official forms for submission to the authorities or private contracts, the question arises whether a handwritten signature is required or an electronic signature would be sufficient.

a. Legal Framework Governing Electronic Records and Electronic Signatures

The Myanmar Evidence Act (1872) is the main legislation concerning the validity of documents as evidence in the Republic of the Union of Myanmar. Enacted in 1872, the original Myanmar Evidence Act (1872) considered only a handwritten signed document as proper "primary" evidence in court.

Only in 2015, the Myanmar Evidence Act (1872) was amended to introduce additional regulations addressing electronic contracting and signatures. The newly introduced section 67A stipulates that signing requirements (for evidence purposes) in respect of “electronic records” can be satisfied with any method which ensures that the signing person can be identified and the intention of such person to sign the document can be determined.

While the Myanmar Evidence Act (1872) itself does not contain a definition of “electronic record” but only provides that a “document” also comprises the electronic record, the Electronic Transactions Law (2014) defines electronic record as “*generated, sent, received or stored by means of electronic, magnetic, optical or any other similar technologies in an information system or for transmission from one information system to another*”. The authenticity and integrity of electronic records is explicitly recognized under sections 3(c), 4(a) Electronic Transactions Law (2014). Some written records are however excluded from the scope of the law (wills, negotiable instruments, trusts, powers of attorney, documents relating to title, instruments prescribed in any existing law to be registered and matters exempted by the Ministry by issuing notification, with the approval of the Government).

The Electronic Transactions Law (2014) further provides that “*matters that are prescribed to be reduced in writing or to be signed under any existing law may be made by electronic record, electronic data message or electronic signature*”, with electronic signature being defined as “*any symbol or mark arranged personally*” by the signatory “*or on his behalf by electronic technology or any similar technologies to verify the authenticity of the source of the electronic record and the absence of amendment or substitution*”.

According to this definition, the electronic signature is thus a method of verifying the authenticity of the identity of the signatory and affirmation that the signed document contains what it was intended to contain by the signatory.

Accordingly, the validity of electronic records and electronic signatures is explicitly stipulated by law, and “*shall not be denied legal effect, validity or enforceability solely on the ground of being made through electronic technology*”. It is also explicitly stipulated that governmental agencies and organizations have to accept “*the transaction of electronic recording or electronic data message as lawful for (a) the filing, acceptance or retention of documents; (b) the issuance of permits, licenses, or consents; (c) the application for the required payment, payment, receipt, and issuance of a receipt therefor*”.

b. Practical Difficulties Concerning Electronic Records and Electronic Signatures

Although electronic records and electronic signatures are recognized by law, their use in Myanmar is in practice still limited. Other than for certain transactions regulated by specific laws, such as mobile financial services, the customary practice is still the use of original documents and “wet” signatures.

Government authorities will often require the submission of original signed documents, as will auditors and most Myanmar institutions (such as banks). Even contracts between private parties that are satisfied with the use of electronic signatures may have to be executed in hardcopy with original “wet” signatures to be accepted by the Myanmar internal revenue authorities as evidence for tax filing purposes.

2. Recommended Solutions

While electronic signatures are not yet readily accepted, Myanmar laws provide for alternative solutions to address the current difficulties caused by the COVID-19 outbreak.

a. Resolution-Making of Companies in Myanmar

The business of a Myanmar company is, to the extent that it is not by law required to be exercised by its shareholders at a general meeting (“Members”), governed by the board of directors (“Board”) as the managing body of the company.

Decisions of the Board and the Members are generally made by resolution. The Myanmar Companies Law (2017) allows for different ways to pass a resolution.

Meetings

Decisions of the Board or the Members of a company are generally to be made by a resolution passed at a meeting duly convened by giving notice to the directors or shareholders eligible to vote, and with a quorum of directors or shareholders attending the meeting.

As an alternative to physical meetings, the Myanmar Companies Law (2017) allows that a meeting of the Board may be convened or held using any technology (e.g. telephone, skype, etc.), or provided in the constitution of the company.

While the Myanmar Companies Law (2017) does not provide for any explicit rules concerning General Meetings held by technological means, it acknowledges this possibility if the company's constitution so provides and if compliance with the requirements for notification and voting under the law is ensured. Such meetings must be held in a manner that all shareholders can attend and must be properly conducted.

Minutes of a meeting shall be signed by the chairman of the meeting, and constitute evidence of the resolutions that have been passed at the meeting.

Written Resolutions

In addition to the above-mentioned possibility of virtual meetings, the Myanmar Companies Law (2017) also recognizes the possibility to pass resolutions in writing in lieu of holding a meeting.

Written resolutions of the Board shall be signed by all directors entitled to vote, containing a statement that they are in favour of the resolution. It is not necessary that every director of the Board signs on the same copy of the respective document, but separate copies of the document in the same form may be signed and the resolution is passed when the last director signs.

Similarly, Members' resolutions of a private company may be passed in writing without General Meetings being held if all shareholders entitled to vote sign a document containing a statement that they are in favour of the resolution set out in the document. Signing in counterparts is also permitted.

Extracts of Minutes / Written Resolutions and Certified True Copies

Once a resolution has been duly passed in a (virtual) meeting or in writing, the company may issue an extract or true copy of the resolution, which can customarily be certified by a director and/or the company secretary.

Any extract or true copy certified by two directors or a director and the company secretary would further meet the requirements for the assumptions stipulated in sections 31, 29 of the Myanmar Companies Law (2017).

b. Private Contracts

While Myanmar law in theory recognizes verbal agreements (unless otherwise regulated by statutory law for certain legal instruments), written contracts are recommended as evidence of a transaction, be it during a statutory or tax audit, or for the enforcement of a claim in a court of law.

Contracts between private parties can be executed in accordance with the law and in accordance with the individual requirements of the contract parties, who may further rely on the assumptions concerning the validity of contracts as codified e.g. in sections 31, 29 of the Myanmar Companies Law (2017) for the execution of contracts by a Myanmar company.

In practice, private contracts will often be signed using electronic signatures, provided that the legal instrument does not have to be registered pursuant to the Registration Law (2018).

It does however have to be observed, that most contracts executed in or brought into Myanmar are subject to payment of stamp duty in accordance with the Myanmar Stamp Act (1899). Stamp duty shall be paid before or at the time of execution of the legal instrument in Myanmar, or within three months from the date when the legal instrument has first been received in Myanmar, by affixing impressed or adhesive stamps to the original legal instrument.

In practice, auditors, tax authorities and other authorities will usually require the provision of original stamped documents as evidence. Since the stamp officers will often refuse the stamping of documents with "printed" signatures instead of "wet" signatures, our recommended approach would be to have the contract stamped prior to signing.

Once the contract has been stamped, the parties may electronically execute the document, with all counterparts forming the valid contract.

Nevertheless, we would recommend that original "wet signatures" should be provided and maintained with the company's records as and when the situation permits to be prepared if such originals are required during a statutory or tax audit.

c. Power of Attorney

Finally, companies may choose to grant a Power of Attorney to a person in Myanmar who is available to provide “wet” signatures as and when required.

It should be noted that a Power of Attorney is not only subject to payment of stamp duty, but may also have to be registered in accordance with the Registration Law (2018), depending on the scope of the authority granted to the attorney.

The applicable requirements for a Power of Attorney should thus be determined on a case by case basis.

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