

Companies Act 2023

Key Highlights

(with Compliance Checklist)

FOREWORD

A long-anticipated piece of key legislation, the Companies Act 2023 (the “**Act**”) was passed by the Maldives Parliament and subsequently ratified by the President of the Republic of Maldives on **27 December 2023**.

The Act repeals and replaces Law No.10/96 (the Companies Act 1996, hereafter the “**Repealed Act**”) in its entirety. Several long-standing practices of the Ministry of Economic Development and the Registrar of Companies have been codified under the new Act, including for instance, the mechanisms for registration of charges over shares in a company, codification of directors’ powers and duties, etc.

There are many welcome new concepts under the Act, most notably the single-shareholder company, removal of objects clause for certain types of companies and acceptance of non-shareholder directors.

With the new regime under the Act also comes several compliance requirements, including the maintenance of a register of *persons with significant interest or control/beneficial owners* of a company registered in the Maldives.

Despite being a lengthy statute at 177 pages, many requirements have been left to be elaborated under subordinate regulations, for instance, the criteria for a company to prepare audited financial statements.

The Act states that these **subordinate regulations** are to be issued by the Ministry of Economic Development by **26 March 2024**.

We have prepared this document to provide an overview of the key changes to the regime governing locally incorporated and registered companies.

The Act is effective from 27 December 2023. Existing companies must ensure **compliance** with the Act before **27 December 2024**.

KEY HIGHLIGHTS

The Act expands on existing provisions of the Repealed Act, while introducing several new concepts and key definitions. The below summarizes the key changes to the existing regime and significant new requirements.

1. Types of Companies/ Categorizations

- a. In addition to the previously recognized categories of **private limited companies, public limited companies, state-owned companies** and **re-registered companies**, the new Act also introduces **2 (two) new categories**:
 - i. Local Authority companies (“**LAC**”); and
 - ii. **Foreign Investment companies (“FIC”)** (*a FIC may be a private company, a public company or a re-registered company. This categorization applies where the entity has foreign individuals or corporates as shareholders*).

2. Single-Shareholder Companies

- a. Abandoning the requirement under the Repealed Act for a minimum of 2 (two) shareholders, the new Act allows for **single-shareholder companies** to be incorporated. **Special provisions and exemptions** apply on general meetings, meetings of directors and generally conducting the affairs of single-shareholder companies.
- b. Similarly, the requirement for a minimum of 2 (two) Directors for each company has been removed. Private companies may have **1 (one) Director only**. The requirement for at least **1 (one) Director to be ‘resident’** in the Republic of Maldives, remains.

3. Non-Shareholder Directors

- a. A key issue under the Repealed Act was the requirement for Directors to be a shareholder in a company. The new Act abolishes this, expressly allowing individual shareholders to appoint a third person as a Director.
- b. For private companies with 100% Maldivian ownership, shareholders are restricted from appointing foreign individuals to represent them on the Board of Directors.

4. Defining Significant Beneficial Owners

- a. The Act introduces key definitions of '**significant beneficial owner**', '**significant influence**' and '**control**'.

“Significant Beneficial Owner” A person has significant control over a company if they possess the following rights or benefits in respect of a company, whether singly or jointly with others, or through a trust:

- holding not less than 25% (twenty-five per cent) of the shares in the company directly or indirectly;
- holding not less than 25% (twenty-five per cent) of the voting rights in the company directly or indirectly;
- being entitled to not less than 25% (twenty-five per cent) of dividends declared by a company in a financial year, whether directly or indirectly;
- otherwise exercising or having the right to exercise significant influence or control over the company other than in capacity of registered shareholder.

“Significant Influence” A person has significant influence over a company if they hold the right, whether directly or indirectly, to be involved in the financial or operational decisions of the company.

“Control” means:

- holding the right to appoint majority of board of directors; or
- control by a person holding the right to be involved in the operation and management of the company, directly or indirectly, singly or jointly; whether by virtue of holding shares, management rights, by means of a shareholder agreement, voting rights agreement or otherwise.

5. Objectives of a Company

- a. It is no longer mandatory for private companies (except FICs, state-owned companies and LACs) to state its objectives in the Memorandum of Association.
- b. Where a private company (other than those exempted) has not specified its objectives, or where it has not restricted its objectives, it may engage in any business not prohibited by law.
- c. A company may opt to specify its objectives, in which case the objectives can only be amended by a special resolution of shareholders.

6. Registers and Records

- a. Companies are now required to maintain registers of:
 - i. directors of the company;
 - ii. shareholders of the company;
 - iii. any charges over the shares of the company; and
 - iv. **significant beneficial owners of the company.**
- b. Directors are responsible for **maintaining the above-mentioned registers and informing any changes** to the Registrar of Companies within stipulated timeframes. Directors may face administrative penalties if found in breach of these requirements.
- c. Accounting records must be maintained for a period of 5 (five) years.

7. Accounting Records, Appointment of Auditors

- a. Under the Repealed Act, all companies (irrespective of SME status, turnover etc.) were required to present *audited financial statements* for approval at a general meeting of shareholders. Indirect attempts were made to relieve small companies of this burden; a [MIRA Tax Ruling of 2018](#) required submission of audited financial statements only for companies with an annual turnover of MVR 10,000,000 (ten million Maldivian Rufiyaa) and above.
- b. The new Act formally relaxes this requirement and only requires companies to **maintain accounting records** (without requirement for an audit) **in accordance with a pre-set criteria**¹. The new Act also states that only certain companies that meet a **pre-determined threshold**² must (i) engage an auditor and (ii) prepare audited financial statements. We anticipate that the thresholds will closely follow those set in the MIRA Tax Ruling.

8. Resolutions and Quorum for Meetings

- a. The Act expressly permits **shareholder resolutions** to be passed by **circulation** without convening a general meeting.
- b. The Board of Directors are required to meet at least 4 (four) times in a calendar year (up from the mandatory 2 (two) meetings in the Repealed Act).
- c. The **legal quorum** for a meeting of the Board of Directors is now set at **50% (fifty per cent) of Directors** appointed.
- d. A **circular resolution** of the Board of Directors may be passed by the **legal quorum**.

¹ To be determined under subordinate legislation.

² The threshold is to be determined under subordinate legislation.

9. Company Secretaries, Company Seal - Mandatory Requirements Now Optional

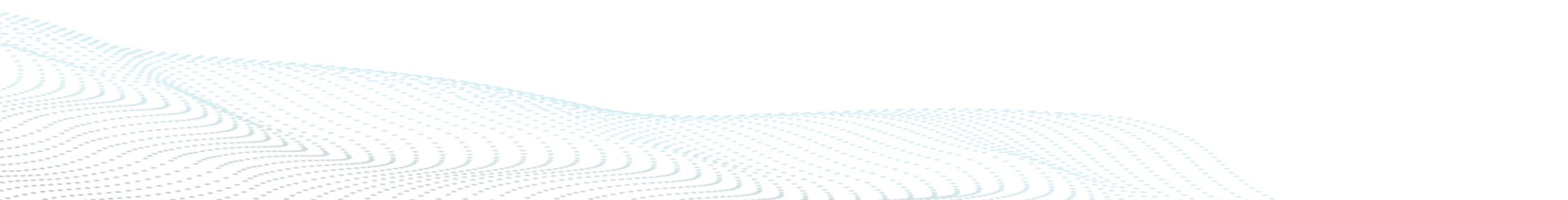
- a. The new Act no longer requires private limited companies to (i) appoint company secretaries or (ii) register a company seal.
- b. In addition to the above, a company may appoint either an individual or a law firm as their company secretary. The Act does not require any individual company secretary to be a Maldivian national, but they must be resident in the Maldives.

10. Share Transfers and Right of First Refusal

Unless stated otherwise in the articles of association of the company, where a shareholder wishes to transfer their shares to a third party, the remaining shareholders in the company shall have a right of first refusal in respect of those shares.

11. Directors Duties, Powers and Responsibilities

- a. Directors are required to discharge their duties and obligations to the Company based on a 'reasonable person's' standard of skill and care.
- b. Some key obligations include the duty to act in the best interest of the company, obligation to declare conflicts of interest and refrain from such decisions and confidentiality obligations.



COMPLIANCE CHECKLIST

We have set forth below **some key requirements** that companies must comply with from the effective date of the Act. This checklist is not intended to be exhaustive, and compliance matters may vary depending on the company.

Where an existing company has any provisions in its constitutional documents that contradict the provisions of the Act, the relevant provision shall be invalid and the provisions of the Act shall apply.

<i>Section No.</i>	<i>Requirement</i>	<i>Detail</i>
<i>Due Execution and Use of Company Name in Documents</i>		
59	Due execution of documents by a Company	A document is deemed duly executed by a company where: <ul style="list-style-type: none">(i) If the company has a registered seal, the document is stamped with the company seal and signed by 1 (one) authorized signatory; or(ii) The document is signed in one of the following ways:<ul style="list-style-type: none">a. signed by 2 (two) authorized signatories; orb. signed by 1 (one) Director in the presence of a witness, with the witness signing; orc. signed by the Managing Director of the company.
75	Use of company name	The company's registered name must appear in full form in the following documents: <ul style="list-style-type: none">(i) formal letters and documents;(ii) notices and other documents legally issued by the company;(iii) bill of exchange, promissory note, endorsement, cheques and other similar documents;(iv) all invoices, receipts and credit letters;(v) any documents pursuant to which the company is to assume any liabilities; and(vi) the company stamp.

Section No.	Requirement	Detail
Share Certificates		
86	Share certificates	<p>A company must issue share certificates to each of its members, with each certificate to include the following details:</p> <ul style="list-style-type: none">(i) holder/ joint-holders of those shares;(ii) number of shares and class;(iii) face value of shares; and(iv) amount paid up for those shares.
Shareholder Meetings and Board Meetings		
102	Online participation/ conducting meeting via electronic means	Where the company proposes to conduct its general meeting of members via electronic means, it must have the consent of the majority of members of the company.
136	Meetings of Board of Directors	The Board of Directors must convene at least 4 (four) times in a given calendar year.
Appointment of Directors		
120	Appointment of Directors	<p>As a general rule, any appointment or election of Directors must be confirmed by a resolution of shareholders.</p> <p>The Act does not prohibit a shareholder from appointing a representative to the Board of Directors (without a shareholder resolution) where the company's articles permit.</p>
Registers		
81	Register of Members	<p>Each company must maintain a register of its members containing the following information:</p> <ul style="list-style-type: none">(i) name, permanent address and service address of members;(ii) national ID/ passport number and nationality of members;(iii) date of registration as a member;(iv) shares allocated to the member, including class, paid up amount; and

Section No.	Requirement	Detail
		above details for all shareholders registered within the preceding 5 (five) years.
123	Register of Directors	Each company must maintain a register of Directors containing the following information: <ul style="list-style-type: none"> (i) name, permanent address and service address of Directors; (ii) national ID/ passport number and nationality; (iii) date of appointment/ election/ removal as a Director; (iv) any shares of the company held by the Director; and above details for all directors appointed/ elected within the preceding 5 (five) years.
175	Register of Share Charges	Each company must maintain a register of charges over their shares.
177	Register of Significant Beneficial Owners	Each company must verify and maintain a register of significant beneficial owners of shares in the company.
<i>Notifying Changes in Directors, Shareholders and Significant Beneficial Owners</i>		
125	Changes to Register of Directors	Any changes to the Register of Directors must be notified to the Registrar of Companies within 15 (fifteen) days.
145	Change in Company Secretary	Any changes to the Company Secretary must be notified to the Registrar of Companies within 15 (fifteen) days.
163	Share Transfers	A share transfer is effective when registered in the register of members. Any share transfers must be notified to the Registrar of Companies within 30 (thirty) days of the company receiving notice of the transfer.
178	Changes to Significant Beneficial Owners	Any changes to significant beneficial owners of the company must be notified to the Registrar of Companies within 30 (thirty) days.
<i>Changes to Share Capital, Share Transfers</i>		
154	Changes to Share Capital	Any changes to the authorized share capital of a company must be notified to the Registrar of Companies within 30 (thirty) days.

Section No.	Requirement	Detail
157	Share Transfers	Any share allocations, transfers or assignments must be registered in the shareholders register.
Record Retention		
180	Record Retention	Accounting records must be maintained in physical or electronic form at the registered address or office of the company. Accounting records shall be maintained for a minimum period of 5 (five) years from the date of their preparation ³ .
Accounting Records and Directors' Report		
182	Preparation of Accounting Records	Accounting records must be prepared and maintained in accordance with the guidelines stipulated under the Act ⁴ .
183	Content of Financial Statements	The company's financial statements must include, at a minimum: <ul style="list-style-type: none"> (i) income statement; (ii) balance sheet; (iii) changes in equity; (iv) cash flow statement; (v) notes on financial statements; and (vi) transactions with related companies.
184	Content of Directors' Report	Each company must prepare a Directors' Report containing the minimum provisions as stipulated in the Act. The Directors' Report (as approved by the members) must be submitted to the Registrar of Companies within 15 (fifteen) days of the members' meeting.

³ Longer periods of record retention may apply under other statutory requirements applicable for a company.

⁴ To be determined under subordinate regulations.

Questions on the Companies Act 2023? Reach out to the authors:



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