

# Client Advisory

## Private Companies Regulation

### In Brief

The Private Companies Regulation<sup>1</sup> (the “Regulation”) is a regulation formulated by the Ministry of Economic Development and Trade (the “Ministry”) under the Companies Act<sup>2</sup> (the “Act”) to set out the rules and procedures governing private companies incorporated and registered in the Republic of Maldives. The Regulation was published and came into effect on 10th October 2024.

We have summarised in this Advisory the significant provisions introduced in the Regulation in addition to, or to supplement, the provisions of the Act.

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<sup>1</sup> Regulation Number 2024/R-99

<sup>2</sup> Act Number 7/2023



## Annual Compliance

### Audit Threshold and Financial Reporting Obligations

The Regulation stipulates the threshold for the determination of whether a company is subject to audit requirements for the purposes of the Act.

All companies are required to prepare annual financial statements under the Act, which states that any audit requirements will be provided in regulations to be enacted pursuant to the Act.

In this regard, under the Regulation, companies that receive an **annual total income of more than MVR10,000,000<sup>3</sup>** are required to appoint an external auditor to audit its annual financial statements and prepare an audit report.

*Note:*

*In addition to stating the audit threshold, the Regulation also stipulates the following modifications to the financial reporting obligations provided in the Act:*

- 1. While the Act states that **all companies** are required to prepare annual financial statements, **only companies that earn business income** in a financial year are required to prepare financial statements under the Regulation.<sup>4</sup>*
- 2. The Regulation also states that companies not subject to audit requirements must prepare and submit to the Registrar of Companies*

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<sup>3</sup> The Regulation has tied the audit threshold to that provided in the Income Tax Act (Act Number 25/2019) (the "Income Tax Act") and its subservient regulations.

<sup>4</sup> The Regulation has tied the requirement to prepare financial statements to that provided in the Income Tax Act as well.



*(the “ROC”) an **income statement** in accordance with the accounting standards to be published by the ROC.*

*As there is an inconsistency between the Act and the Regulation, we expect the ROC to provide additional guidance on the mechanics of the financial reporting obligations of companies.*

### **Declaration of Dividends and Solvency Test**

The Regulation details the mandatory content to be reflected in the **solvency test** that is required to be included in the Directors’ Report by companies that declare dividends in any financial year. In this regard, a company will be deemed to be solvent under a solvency test carried out under the Act if:

The company can maintain its ability to pay its debts as and when they fall due without being compelled to:

<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
Sell any assets outside the ordinary course of business	Undertake any debt restructuring	Make any alterations to the general business of the company	Take any other similar measures

This solvency assessment of a company for the purposes the Act and the Regulation must be carried out by the **company’s auditor**.<sup>5</sup>

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<sup>5</sup> The Regulation is unclear on the operation of this requirement where a company does not have to appoint an auditor under the Act or Regulation.



### **Directors' Annual Declaration**

The Regulation includes the standard form of the declaration of the directors required to be included as part of the Directors' Report pursuant to the Act.

The declaration is intended to be confirmation from the directors that the information of the company and constitutive documents recorded with ROC is up-to-date, information in the financial reports are accurate and that the Directors meet the requisite criteria applicable to them.

### **Removal of Company Secretaries**

The Regulation states that individuals appointed as secretaries of private companies under the former Companies Act<sup>6</sup> will be removed from the Register of Companies upon commencement of the Regulation.

However, the Regulation states that, despite such removal, the information of such secretaries will remain available on the system designated by the Registrar of Companies.

Therefore, company secretaries no longer have any formal role in private companies and thus the signature of company secretaries will no longer be required in corporate documents (including Board Resolutions of companies).

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<sup>6</sup> Act Number 10/96



## Registration and Recording Requirements

### Share Transfer Notice

The Regulation states the following requirements for Share Transfer Notices that are required to be submitted to private companies to record and register transfers of shares, a copy of which is also required to be submitted to the ROC by companies to record share transfers:

1. Particulars of the transferor and transferee;
2. Particulars of the transferred share(s) and the consideration for the transaction;
3. Date of the transfer;
4. Declaration signed by the transferor of the transferee **notarised under Maldivian notarial rules**,<sup>7</sup> confirming that:
  - o The transferor is the owner of the transfer shares; and
  - o The transferor wishes to sell and transfer the transfer shares to the transferee;
5. Changes to be brought to the board of directors as a result of the share transfer; and
6. Copies of the identification of the transferee and any new appointees to the board of directors.

### Date of Share Transfer on the Register of Companies

The Regulation states that the date of any share transfer recorded in the Register of Companies maintained by the ROC will be the date on which the application to record the share transfer was submitted to the ROC.

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<sup>7</sup> As provided in the Legal Profession Act (Act Number 5/2019) and its subservient regulations.



However, despite the above, it is to be noted that the effective date of the share transfer of a company would be the date on which the Register of Members maintained by the company is updated following the share transfer. Hence, there will be a discrepancy between the effective date of share transfers and the date of the share transfers as recorded in the Company Profile Information Sheets issued by the Ministry.

## Reporting Changes to Corporate Information

The Regulation requires changes to the following information provided to the ROC at the time of the registration of the company to be reported **within 7 (seven) days**:

1. Changes to the following particulars of shareholders and directors:
  - o National ID Card Number/Passport number;
  - o Mobile phone number;
  - o Email address;
  - o Permanent address; or
  - o Service address;
2. Changes in the shareholding of any corporate shareholders;
3. Changes in the information required for classification of the company under the Small and Medium Enterprises Act<sup>8</sup>; and
4. Information required to be registered at the MIRA and the Maldives Pension Administration Office.

The Regulation provides the ROC the discretion to impose **finer ranging between MVR1,000 and MVR100,000** on companies for any breaches of this requirement.

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<sup>8</sup> Act Number 6/2013



## New Deadlines

The Regulation also introduces the following new deadlines.

Subject	Deadline
Registration of changes in registered and service addresses with the Registrar of Companies	<b>Within 7 days</b> from the date on which the change is approved by the company.
Registration of the conversion of the company into a public limited company with the Registrar of Companies	<b>Within 7 days</b> from the date on which the company approves the conversion.
Reporting of the adoption of the Model Articles after incorporation to the Registrar of Companies	The special resolutions of its shareholders that approved the adoption of the Model Articles must be submitted to the Registrar of Companies <b>within 3 days</b> .
Payment of fines imposed pursuant to the Act and Regulation	Must be paid <b>within 21 days</b> .  The Registrar of Companies also has the discretion to <b>extend</b> this period by a period of <b>up to 7 days</b> .



## Additional Obligations and Liabilities

### Additional Responsibilities and Liabilities Imposed under the Regulation

The Regulation imposes additional responsibilities and liabilities on the Company, Directors, Auditors and Liquidator. A summary of the new key changes has been provided below:

Party	Responsibility and/or Liability
<b>Company</b>	<p>In addition to the infractions that result in the imposition of fines as stated in the Act, companies can also be fined for:</p> <p>Failure to share its accounting records with its directors and shareholders upon their request; and Failure to share the directors' report with shareholders upon their request.</p>
<b>Directors</b>	<p>If a director is disqualified under the Act from holding their directorship at any time, they must report such disqualification to the company <b>within 3 days</b> of their disqualification.</p> <p>In addition to the infractions that result in the imposition of fines as stated in the Act, directors can also be fined for the failure of the company to submit its annual financial statements to the Registrar of Companies in accordance with the Act and the Regulation.</p>





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**Liquidator**

If the liquidation of a company is not completed within a period of 1 year, the liquidator must convene a general meeting and present the details of the work carried out for the liquidation of the company to the shareholders.

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**Auditors**

If the annual audit of the company is not completed within the time frame agreed between the company and the auditor due to no fault of the company and due to the negligence of the auditor, action shall be taken against the auditor as follows:

Fined in accordance with the Regulation (MVR 1,000 for the first infraction, MVR 2,000 for the second infraction and MVR 5,000 for all subsequent infractions); and Application to the Institute of Chartered Accountants of the Maldives to take action against the auditor.

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## **Company Registration**

### **Rules on Registration of Company Names**

The Regulation expands on the conditions required to be satisfied of names given to companies, with new requirements introduced in addition to those already stipulated in the Act and the Business Registration Act.<sup>9</sup>

The Regulation also details the procedures applicable to the submission of objections to names given to companies.

### **Permitted Characters in Names of Companies**

The Regulation has introduced a list of characters permitted to be used in the names of companies incorporated and registered under the Act.

### **Company Seal**

If a company wishes to use a company seal, the seal must be submitted for registration on the system designated by the ROC in any format required by the ROC.

Any phrases, symbols or images other than the name and registration number of the company must be registered at the Ministry before its use in the company seal.

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<sup>9</sup> Act Number 18/2014



## Other Key Matters

### Attestation and/or Notarisation Requirements

The Regulation states that, unless otherwise provided in the Act or Regulation, a version of any documents required to be submitted to the ROC that have been **notarised or attested under Maldivian notarial or attestation rules** can be submitted in place of wet-ink originals of those documents.<sup>10</sup>

### Submissions to the ROC

The Regulation has reflected the current practice of all submissions to be made to the ROC under the Act and Regulation being made on the Business Portal, as the Regulation states such submissions are to be made through the system designated by the ROC.

## Effective date

This Regulation is effective from 10 October 2024.

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<sup>10</sup> As provided in the Legal Profession Act (Act Number 5/2019) and its subservient regulations.



## 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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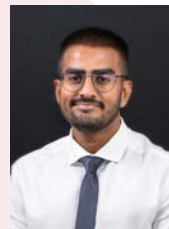


Zameel specialises on corporate advisory and regulatory matters and advises clients on inbound foreign investments including structuring investments and transaction management. He is experienced in drafting and vetting commercial contracts and has advised on a broad spectrum of transactions including tourism, banking related areas and M&A transactions.

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Arzan is primarily engaged with respect to the corporate services provided by the firm and advises clients with respect to foreign investments, corporate governance, structuring transactions and regulatory compliance in the Maldives. Arzan has expertise in corporate and commercial matters, with particular interest in transaction advisory matters and structuring contracts.

# About us

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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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