

GUIDE ON THE MALDIVES COMPANIES ACT 2023

**IN RELATION TO PRIVATE
AND FOREIGN INVESTMENT
COMPANIES**



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EXECUTIVE SUMMARY



This guide highlights the significant changes brought about by the Companies Act 2023, which replaces the previous Maldives Company Act of 1996. The following summary presents essential changes applicable under the new Act to private and foreign investment companies in the Maldives.

PRIVATE COMPANIES

The Act introduces pivotal changes enabling the formation of single shareholder companies with simplified management structures. It removes the obligation to maintain a company secretary and company seal. Also, offers the flexibility to designate a service address and opt for model articles of association.

FOREIGN INVESTMENT COMPANIES

The Act classifies companies with foreign shareholding as 'foreign investment companies', detailing specific requirements for their incorporation and operation.

ANNUAL REQUIREMENTS

The Act retains previous mandates for AGMs, Directors Report, Annual Accounts, Audits (if applicable) while modernizing relevant provisions.

RECORDS MAINTENANCE

Companies are mandated to maintain various registries, including those for members, directors, charges, significant beneficial owners, and more.

BOARD OF DIRECTORS

The Act permits the appointment of representative directors, outlines minimum eligibility requirements, defines rules on appointment and removal, stipulates directors' obligations and fiduciary duties, and mandates a minimum number of annual meetings.

SHAREHOLDERS

The Act provides clarity on AGM requirements, proxies, voting procedures, and resolutions.

SHARE TRANSFERS

The introduced changes grant the right of first offer to existing shareholders and clarify the rules relating to registering share transfers.

CALL ON SHARES

The Act clarifies rules and procedures for calling on unpaid shares and the forfeiture of shares.

SECURED TRANSACTIONS

The Act introduces a framework for companies to raise funds using shares and assets as security, necessitating registration of charges.

INACTIVE COMPANIES

The Act specifies the circumstances under which the Registrar of Companies can designate a company inactive as and outlines the subsequent consequences.

REGULATORY FEES

The Act replaces the annual fee structure with a service-based fee for various regulatory services.

NON-COMPLIANCE PENALTIES

Companies, directors, managing directors, third parties are subjected to reporting obligations and compliance with Registrar's directives. Non-compliance results in penalty fines.

INTRODUCTION

The new Companies Act (Law No: 7/2023) (“New Companies Act”) was published on 27th December 2023 and became effective on 1st January 2024. This new law replaces the previous Maldives Company Act of 1996. Noteworthy changes introduced by the New Companies Act encompass simplified procedures for company registration, the introduction of single shareholder companies, abolition of the company annual fee and replacing it with regulatory service fees, and clarification of fundamental concepts pertaining to shares, membership, directorship, derivative actions, and the dissolution of companies.

Existing companies are given a period of one year from the effective date to comply with the new rules, that is by 31st December 2024.

Further, regulations to be formulated under the New Companies Act are to be published within 90 days from the effective date of the new law. These regulations will provide detailed guidance and clarity on the rules prescribed under the new law.

In this guide we delve into the new rules outlined in the New Companies Act pertaining to private companies including locally owned and foreign investment companies.

PRIVATE COMPANIES

While previously at least 2 shareholders were required to form a private company, under the New Companies Act a private company can be registered with a single shareholder, holding a single share, and managed by a single director.

The maximum number of members allowed in a private company remains the same as in the previous Act, which is 50. Individuals, the Government, or legal entities (such as companies, partnerships, state institutions, local councils, or registered associations) are eligible to hold membership (become shareholders) in private companies.

FOREIGN INVESTMENT COMPANIES

The New Companies Act classifies any company (whether private or public) with foreign shareholding as 'foreign investment companies'. Foreign investment companies are either locally incorporated companies with foreign shareholding or re-registered foreign entities (whether legal entities, charities, foundations, or associations incorporated abroad).

A foreigner, or a company or partnership with foreign shareholding can hold shares in a locally incorporated company after obtaining foreign investment approval as per the Foreign Investment Act and policies.

An entity incorporated abroad can be incorporated in the Maldives by re-registering it. To re-register, the foreign entity must first obtain Foreign Investment Approval as per the Foreign Investment Act and policies. Once a foreign entity is re-registered, they are typically called re-registered companies.

Re-registered companies must appoint a local agent in the Maldives. The local agent must be of 18 years of age and ordinarily resident in the Maldives, and if declared bankrupt or insolvent or convicted for fraud, dishonesty or money laundering offense, 5 years must have elapsed from such an event. The local agent's primary role is to ensure compliance with the New Companies Act and is personally accountable for non-compliance. Unless the re-registered company specifies otherwise, the local agent is the focal point to receive correspondence from the Registrar of Companies pertaining to the re-registered company.

ANNUAL REQUIREMENTS



All companies are required to carry out the following compliance requirements on an annual basis, failure of which, may become liable to penalties under the New Companies Act:

Annual General Meeting (AGM)

Similar to the previous law, an AGM of shareholders is to be held annually. Refer to the section on AGM's in this guide.

Directors Report

A company's Directors Report is to be filed with the Registrar of Companies within 15 days of holding a company's AGM or within a period prescribed by the Registrar.

Annual Accounts

A company's Annual Accounts is to be filed with the Registrar of Companies within 15 days of holding a company's AGM or within a period prescribed by the Registrar.

Audit (for applicable companies)

An audit report is to be prepared by a licensed external auditor and is to be presented at the AGM. Regulations to be formulated under the New Companies Act will specify the company eligibility criteria for audit requirements

Board Meetings

At least 4 board meetings must be held annually.

Board meetings can be convened online or by using electronic means in accordance with Articles of Association.

RECORDS MAINTENANCE



The New Companies Act requires each company to maintain the following records.

Members' registry	<p>Companies must maintain a members' registry. It must include the following information of all those who were shareholders within the previous 5 years:</p> <ul style="list-style-type: none">• name, permanent address, and service address of the shareholder• national identity card number or passport number and nationality, or if the shareholder is an entity, its registration number• date on which the shareholder was registered on the members' registry• number of shares allotted to the shareholder, and if a series number is given to each share, the serial numbers• class of shares• amount paid on shares or amount the company acknowledges to have been paid• date on which the shareholder was removed from the members' registry
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Directors' registry	<p>Companies must maintain a directors' registry. It must include the following information of all directors appointed within the previous 5 years:</p> <ul style="list-style-type: none">• name, permanent address, and service address of the director• national identity card number or passport number and nationality• date of appointment• if the director is a shareholder, details of it• date of removal or resignation
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Financial records	Companies are required to maintain financial statements in a manner that a true and fair audit can be undertaken.
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Accounting records	Companies are required to maintain all accounting records for a period of 5 years and such records must be made available for inspection by directors and members (shareholders).
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Registry of charges	To be maintained in accordance with the regulations to be enacted under the New Companies Act.
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Information of ultimate beneficial owners	If a shareholder is an entity, companies are required to maintain the information of ultimate beneficial owners in the manner prescribed under the regulations to be enacted under the New Companies Act.
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Registry of significant beneficial owners	Significant beneficial owners are those individuals who hold at least 25% shares in the company, holds the right to receive at least 25% of the dividends disbursed in a financial year or has the right to exert significant influence or control over the company.
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Companies are required to maintain a registry of significant beneficial owners and share such information with the Registrar of Companies.

MINIMUM REQUIREMENT

All private companies must have at least 1 director. This is a change from the previous requirement of 2 directors.

MANDATORY REQUIREMENTS

All private companies must appoint a managing director. At least 1 director must be ordinarily resident in the Maldives.

NATIONALITY

Except for foreign investment companies, all private companies must appoint Maldivians as directors.

Foreign investment companies can have all foreigners as directors.

ELIGIBILITY

A person appointed as a director:

- of a 100 % locally owned private company, must be a Maldivian national;
- must be 18 years of age;
- must not be the company's auditor or liquidator;
- must not be barred from holding the position of a directorship by law or by an agreement; and
- must not fall within a disqualifying criterion stated below.

DISQUALIFICATION

The Registrar of Companies holds the authority to disqualify a director if any of the following criteria are met.

- if declared bankrupt or insolvent (disqualification applies for 5 years);
- if convicted of dishonesty, fraud or money laundering offense (disqualification applies for 5 years);
- if directors have unpaid fines imposed under the New Companies Act;
- serves as the company's auditor or liquidator; or
- is barred from holding the position of a director by law or agreement.

Existing companies have a grace period of 1 year from 1 January 2024 onwards to ensure compliance with director's qualification requirements.

APPOINTMENT

Directors must be appointed by members' general meeting or resolution. If the Articles of Association gives the power to a specific shareholder to appoint a director(s), then by the resolution of such a shareholder a director(s) can be appointed.

The composition of the board of directors must be determined by the Articles of Association.

Natural persons who are shareholders can now appoint individuals other than themselves as representative directors, which was previously permissible only for entity shareholders. This change paves the way for shareholders to appoint professionals from various backgrounds to the position of directors.

REMOVAL

Directors must be removed in accordance with the Articles of Association.

Additionally, director's position is considered vacant if a director resigns, is removed from the position in accordance with the Articles of Association, if a director is disqualified, upon death, or if the position becomes vacant in accordance with the company's constitution (Articles of Association and Memorandum of Association).

FREQUENCY OF MEETINGS

Companies must hold at least 4 board meetings within a year. Board meetings can be convened online or by using any other electronic means in accordance with Articles of Association.

QUORUM OF MEETINGS

The quorum of board meetings is more than 50% of the existing directors of the company. A company may decide a higher limit for quorum in its Articles of Association.

Companies that have a single director are exempt from this quorum requirement.

VOTING

Each director present in a board meeting can cast one vote.

RESOLUTIONS

Resolutions of the board of directors must be passed by majority vote. However, a company may prescribe a different minimum threshold in its Articles of Association.

Circular resolutions can be passed by a majority of more than 50% of existing directors. However, a company may prescribe a different minimum threshold in its Articles of Association.

The New Companies Act enables resolutions to be passed by using electronic means.

SHAREHOLDERS



The New Companies Act introduced the following new changes:

- Single shareholder companies; and
- Where a shareholder is an entity, a registry is to be maintained containing information of the beneficial owners and significant beneficial owners (holding at least 25% shares). Refer to the records maintenance section of this guide for more information.

Additionally, previous rules on shareholder's liability are carried forward in the Act. Shareholders are liable only to the amount if any is unpaid on the shares acquired by the shareholder from the date the shareholder has acquired such share(s).

Where a previous shareholder has failed to fulfil any obligation related to share(s) held in a company, and subsequently such shares are forfeited, then the unfulfilled liability in respect of such shares will remain with the previous shareholder. Refer to the call on shares section of this guide for more information.

ANNUAL GENERAL MEETINGS (AGM)

All companies must hold an AGM of their members.

Where a company has a single shareholder, such a company is not required to hold an AGM of its members. However, where a company has more than a single shareholder, such a company is required to hold an AGM of its members.

For a single shareholder company, a resolution passing the required annual documents (directors report, annual accounts, audit report (where applicable) signed by such single shareholder and sent to the Company will be considered as having fulfilled the requirement of annual approval by such shareholder. Requirements applicable to companies with more than a single shareholder such as, requirement for prior written notice, quorum, voting rights and proxy rights will not be applicable for single shareholding companies.

EXTRAORDINARY GENERAL MEETINGS (EGM)

Directors of a private company with more than a single shareholder are required to arrange an extraordinary general meeting of its members on request by shareholder(s) who hold more than 10% of shares in the company.

PROXY APPOINTMENT

Every shareholder is entitled to appoint a proxy in their place for attendance to general meetings and such a proxy is entitled to speak on behalf of the shareholder and vote on their behalf.

ELECTRONIC MEETINGS

General meetings may be held by electronic means provided the quorum required for such meetings consent to such electronic means.

QUORUM

The quorum of a general meeting is shareholder(s) representing more than 50% of the shares in a private company.

VOTING

Voting at a general meeting is to be by a poll where each shareholder has one vote for each share held in the company. The articles of association can also prescribe voting by a show of hands or by electronic means.

CIRCULAR RESOLUTIONS

Ordinary resolutions of the members can be passed in circulation without the need for a physical meeting provided it is passed by shareholders representing more than 50% of the shares in a company.

Special resolutions of the members can be passed in circulation without the need for a physical meeting provided it is passed by shareholders representing more than 75% of the shares in a company or a higher percentage if it is provided for in a company's articles of association.

COMPANY SECRETARY

Under the New Companies Act, it is no longer mandatory for private companies to appoint a company secretary. When a private company chooses to appoint a company secretary, they can appoint a natural person or a professional services firm.

- For natural persons to be appointed as a company secretary, such person:
- must be 18 years of age;
- must be ordinarily resident in the Maldives.
- must not be a director the company
- must not be the company's auditor or liquidator
- must not be barred from holding the position of a directorship by law or by an agreement; and
- must not fall within a disqualifying criterion applicable for directors.

For professional service firms, they must be registered in the Maldives and can be either law firm, accountancy, or audit firm. However, such firm should not have declared bankruptcy or resolved to dissolve.

RESPONSIBILITIES OF A COMPANY SECRETARY INCLUDE:

- ensuring a company complies with the rules of the New Companies Act, regulations made thereunder and the company's memorandum and articles of association;
- ensuring the directors are made aware of their responsibilities under the law;
- arranging and managing board meetings and general meetings;
- preparation and maintenance of board and shareholder minutes and resolutions;
- preparation of regulatory documentation to evidence board and shareholder resolutions;
- preparation of all regulatory filings to be made to the Registrar of Companies;
- liaising with the Registrar of Companies on regulatory matters; and
- preparation and maintenance of all registries and relevant documents mandated under the law.

COMPANY SEAL

Companies are no longer required to maintain a company seal. However, if a company opts to maintain one, the seal must be registered in accordance with the regulations enacted under the New Companies Act. A registration fee of MVR 100.00 is required for the company seal.

Companies that maintain a seal have the option to execute various company documents with the signature of one authorized person, accompanied by the affixation of the company seal on those documents. Alternatively, company documents can be executed with the signature of two authorized persons. They can also be authenticated by the managing director, or by a director of the company in the presence of a witness, with the affixation of signatures from both the witness and the director.

SERVICE ADDRESS

Under the New Companies Act, companies now have the option to maintain a service address in addition to the registered address. However, re-registered companies are required to maintain a service address in the Maldives.

When a service address is registered with the Registrar of Companies, all correspondence from the Registrar and third parties will be directed to the company's service address. Companies can designate the service address to be the address of a firm (law firm, audit or accountancy firm) appointed by them. In the absence of a registered service address, a company's registered address will be considered the service address for the purpose of sending correspondence to the company.

MODEL ARTICLES

The New Companies Act envisions model articles of association (“Model Articles”) tailored for private companies. These Model Articles are designed to offer standard default provisions governing the structure and operation of a company. The Registrar of Companies is mandated under the Act to enact the Model Articles.

When the Model Articles are enacted by the Registrar of Companies, existing companies can adopt them by passing a special resolution. New companies, on the other hand, have the option to adopt the Model Articles by explicitly stating their adoption in the Memorandum of Association.

COMPANY NAME

The New Companies Act provides a comprehensive set of rules on the use of the company’s name. Previously, a similar but brief set of rules applied in this regard under the former Company’s Regulation.

Companies must now disclose or use their complete registered name on the following:

- official letters or documents of the company;
- notices issued by the company or official company publications;
- bill of exchange, promissory note, endorsement, or any other documents executed by the company that which cheque, money, or goods are released;
- invoices, receipts, letters of credit;
- all documents issued by the company that create legal liabilities on the company;
- company seal;
- at the company’s office in a publicly visible manner in accordance with the regulations to be enacted under the New Companies Act.

SHARE TRANSFERS



The New Companies Act modernizes the share transfer provisions in the previous Act. The new guidelines are stated below.

Right of first offer

Unless otherwise stated in the company's Articles of Association, existing shareholders must be granted the right of first offer before shares can be transferred to a third party.

Board of directors' approval

Under the previous law, share transfers were subject to the approval of the board of directors. However, under the New Companies Act, no such approval is required, and the board of directors' functions remains an administrative one in registering the share transfer.

Process

To transfer shares, parties must complete a share transfer document that contains information relating to the transferee and transferor, details of the shares transferred, share consideration, and any other information stated in the regulations to be enacted under the New Companies Act.

The executed share transfer document must be sent to the company's service address.

When share transfer is deemed to be completed

Unless otherwise stated in the company's Articles of Association, share transfer is deemed to be completed at the time the transfer is registered in the company's records and the change in membership is registered in the members' registry.

Registration of the share transfer

Within 30 days of receiving the share transfer document, the board of directors must register the share transfer in the company's records and register the change in membership in the members' registry accordingly.

Registration of the share transfer can be refused if the transfer is prohibited under the Articles of Association, the transferee has any unpaid money or debt to the company, including their share subscription, or the share transfer was carried out without granting the right of first offer to the existing members.

The decision relating to the registration of the share transfer must be communicated to both the transferee and transferor within 3 days of the decision along with a copy of the decision citing reasons.

A decision not to register the share transfer can be challenged at court. If the court finds such a decision was made in violation of the company's Articles of Association and regulations enacted under the New Companies Act, the court holds the power to quash the decision and order to register the share transfer.

Notification of the share transfer to the Registrar of Companies

Companies must notify the Registrar of Companies of any changes made to the membership registry pursuant to transfer of shares within 15 days of such change.

Failure to notify the Registrar does not invalidate the share transfer. If the shares were transferred in accordance with the New Companies Act and the Articles of Association, the share transfer and the respective changes to the membership registry will remain valid.

CALL ON SHARES



In contrast to the previous Act, the New Companies Act provides clarity on the rules concerning the call on shares. A call is a demand made by the company on its shareholders to pay in whole or part the unpaid amount on shares held by them within a specific duration. When shares are allotted or sold for cash consideration, the board of directors is empowered to make a call on shares. However, if the terms of the allotment specify the manner and date by which the consideration must be paid, the board of directors is not obligated to make a separate call.

Should a call remain unpaid after its due date, the New Companies Act obligates the board of directors to issue a statutory forfeiture notice to the defaulting shareholder. The notice must allow a 14-day period for the shareholder to settle their share consideration and explicitly state that failure to comply will result in the forfeiture of the shares corresponding to the notice.

Forfeited shares must be recorded in the members' registry and the New Companies Act states that such records shall constitute evidence of forfeiture. If all the shares held by a shareholder are forfeited, the shareholder must be removed from the company's members' registry as well. Even if a shareholder is removed due to forfeiture of shares, they will not be relieved from their liability to pay their share consideration to the company. Forfeited shares are deemed to be treated as unallotted shares of the company's share capital.

SECURED TRANSACTIONS

The New Companies Act paves way for companies to raise funds by introducing a secured transactions framework concerning shares and assets of the company. Charges created over the following assets of the company are required to be registered with the Registrar of Companies within 30 days of the creation of such charge:

- debentures
- charge over unpaid share capital;
- share charge over shares held in a subsidiary company;
- floating charge over company's asset or undertaking; and
- any other charge prescribed under the regulations to be enacted under the New Companies Act.
- Additionally, companies are required to maintain a separate registry of charges.

INACTIVE COMPANIES



The Registrar of Companies has the power to declare a company as inactive where a company fails to:

- have the minimum number of directors in its board for a period of more than 3 consecutive months;
- file the newly prescribed declaration as part of its Directors Report for a period of more than 1 year;
- file its annual filings to the Registrar for a period of more than 2 consecutive months; or
- settle any financial penalties imposed for non-compliance for a period of more than 1 year.

REGULATORY FEES

The New Companies Act has abolished the payment of the company annual fee of MVR 2000.00 and replaced it with the following regulatory service-based fees.

REGULATORY SERVICE

FEE

Private company registration fee

MVR 2000.00 (Maldivian Rufiyaa Two Thousand)

Registration of changes to the memorandum or articles of association

Registration of changes to the registered or service address

Issuing copies of the memorandum or articles of association to on request by shareholders

Registration of changes to the authorized capital

MVR 100.00 (Maldivian Rufiyaa One Hundred)

Registration of changes to shareholders or shares (share transfers)

Registration of changes to the managing director, directors, or company secretary

Registration of the company seal

Reservation of company or business names and extensions (7-day period)

NON-COMPLIANCE PENALTIES



OFFENSE OF NON-COMPLIANCE	PENALTY FINE
Company for non-compliance of the prescribed new rules	MVR 2000.00 for each instance
Directors for non-compliance of the prescribed new rules and/or Managing Director for non-compliance of Annual Filings	MVR 1000.00 in the first instance MVR 2000.00 in the second instance MVR 5000.00 for the third instance and instances in excess
Third parties for non-compliance of the following matters: <ul style="list-style-type: none">● Failure of the shareholder or the significant beneficial owner to register their interests and any changes made; and● Failure of the liquidator to notice the Registrar of their appointment within 7 days from the date of appointment	MVR 1000.00 in the first instance MVR 2000.00 in the second instance MVR 5000.00 for the third instance and instances in excess
Non-compliance of the Registrar of Companies directions	MVR 1000.00 to MVR 100,000.00
Misinformation, falsified records or hinderance of investigations by the Registrar of Companies	Criminal penalties

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ABOUT US

RCo Lawyers is a law firm registered under Riza & Co. LLP providing legal services in the areas of corporate and commercial law since 2018.

We are a dynamic team of trusted legal advisors driven by our passion to find modern and holistic solutions to corporate and commercial issues in the Maldives.

DISCLAIMER

All information contained in this publication is meant to serve as a guide and should not be considered as legal advice. Information contained in this publication is current at the date of publication, that is 15 January 2024.



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