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**Kelvin Chia Yangon Ltd (KCY)**

Level 8A, Union Financial Center, Corner  
of Mahabandoola Road and Thein Phyu  
Road, Botahtaung Township, Yangon.  
(951)8610348/8610349  
[csg@kcyangon.com](mailto:csg@kcyangon.com)  
[www.kcpartnership.com](http://www.kcpartnership.com)

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## **General Powers of a Liquidator and Void Transactions under Insolvency Law**

The enactment of the *new* 2020 Insolvency Law (“**Insolvency Law**”) on 14 February 2020, which was made effective on 25 March 2020 has cast the framework for corporate insolvency, personal insolvency as well as rehabilitation and corporate rescue in Myanmar. In addition to these changes, the Insolvency Law also provides for the roles and powers of a liquidator appointed in order to wind up a company. In the winding up process, the Insolvency Law likewise prescribes a list of transactions which may be considered void if entered into without the consent of the liquidator, and provides rules on adjustment of prior transactions.

### **General Powers of Liquidators**

The general powers of a liquidator in the winding up of a company under the Insolvency Law includes the power to:

1. Carry on the business of the company, insofar as may be required for the beneficial administration or winding up of such business;
2. Pay any class of creditors, subject to the provisions of general application on winding up;
3. Make any arrangement or compromise with creditors, persons claiming to be creditors, or persons with a claim against the company, or whereby the company may be rendered liable;
4. Compromise any call, debt, liability and claim between the company and a contributory or other debtors, negotiate any disputes in any way relating to or affecting the property or the winding up of the company, and give complete discharge in respect of any such call, debt, liability or claim;
5. Bring or defend any legal proceeding on behalf of the company;
6. Appoint a solicitor for assistance;
7. Sell or otherwise dispose of, in any manner, all or any part of the property of the company;
8. Execute in the name of and on behalf of the company all deeds, receipts and other documents and for that purpose, use when necessary a seal of the company;
9. Obtain credit, whether on security of the property of the company or otherwise;
10. Take any action necessary to collect any money due from a contributory or debtor;



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11. Appoint an agent to do any business that the liquidator is unable to do, or that is unsuitable for the liquidator to do in person; and
12. Do all such other things as are necessary for winding up the company's affairs and distributing its property.

### **Void Transactions without the Liquidator's Consent**

The Insolvency Law introduces a list of specific transactions made after the appointment of a liquidator that are null and void if entered into without the consent of the appointed liquidator. In particular, following the appointment of the liquidator, any disposition of the company's property without the consent of the liquidator is null and void, unless such disposition is pursuant to an order of the Court [Section 172 (e)]. Further, any transfer of shares, not being made by or with the approval of the liquidator, and any alteration in the status of the members of the company arising from such transfer, is null and void. The Insolvency Law, however, ensures that said provisions shall not affect the rights of the secured creditor in respect of its security or exercise of those rights.

### **Adjustment of Prior Transactions**

The Insolvency Law empowers the liquidator to review and apply for the adjustment of prior transactions in order to protect the insolvent company's assets for the benefit of its creditors. Particularly, Section 361 enables an office holder, which includes the appointed liquidator of a company, to apply for appropriate relief from the Court in instances where an insolvent company has entered into a transaction at a set relevant period with a creditor, which results in that creditor receiving, in respect of an unsecured debt, more than what it would have received from the insolvent entity were the transaction to be set aside and said creditor were to prove the debt. The relevant period covers a) a period of six (6) months ending on the review date, or b) a period of 4 years ending with on review date where the beneficiary of the transaction was an associate of, or is a person who is connected with the insolvent entity.

The review date is defined under Section 359 of the Insolvency Law as follows:

1. The review date of a company rehabilitation proceeding in accordance the Insolvency Law is the date when the appointment of the rehabilitation manager took effect, or if the appointment was followed by liquidation, the date when the winding up commenced.
2. The review date of a micro, small and medium enterprise undergoing rehabilitation in accordance with the Insolvency Law is the date when the appointment of its rehabilitation advisor took effect.
3. The review date of a company in liquidation is the date of the commencement of the winding up proceeding.

The Insolvency Law also affords protection against extortionate credit transactions. Under Section 363, where the insolvent entity is or has been a party to a transaction for or involving the provision of credit to the insolvent entity, the office holder, such as a liquidator, may apply with the Court for an order in respect of the provision of such credit if said transaction is determined to be extortionate and was entered into within 3 years from the review date. The following transactions are considered as extortionate, unless the contrary is proven:

1. Exorbitant payments were made in respect of provision of credit, whether unconditionally or in certain contingencies, or
2. Provision of credit grossly contravening ordinary principles of fair dealing.

In instances under Section 363, the Court may a) order the cancellation, in whole or in part, of any obligation created by the extortionate transaction, b) order the modification of all or part of the terms on which any security for the purposes of the transaction is held, c) require any person who is or was a party to the provision of credit to pay the office-holder any sums received by that person from the insolvent entity, or d) require any person to surrender to the office-holder any property held by him as security for purposes of the provision of credit.

## Our Partners in Yangon



**Cheah Swee Gim**  
 Director of Kelvin Chia Yangon  
 Senior Partner of Kelvin Chia Partnership  
[cheah.sweegim@kcpartnership.com](mailto:cheah.sweegim@kcpartnership.com)



**Pedro Jose F. Bernardo**  
 Principal Foreign Attorney of Kelvin Chia Yangon  
 Partner of Kelvin Chia Partnership  
[pedro.bernardo@kcpartnership.com](mailto:pedro.bernardo@kcpartnership.com)



**Khin Leimar Ban Aye**  
 Principal Legal Manager of Kelvin Chia Yangon  
 Partner of Kelvin Chia Partnership  
[kim@kcyangon.com](mailto:kim@kcyangon.com)



**Lyra Miragrace Flores Bisnar**  
 Principal Foreign Attorney of Kelvin Chia Yangon  
 Partner of Kelvin Chia Partnership  
[lmcf@kcyangon.com](mailto:lmcf@kcyangon.com)

## About Kelvin Chia Yangon (KCY)

KCY has been in active operation in Myanmar since 1995, currently with offices in Yangon and Mandalay. KCY is the firm of choice for those seeking to navigate Myanmar's fast-changing and complex regulatory landscape, a jurisdiction in which KCY has gained in-depth legal expertise from the numerous transactions it has handled.

### Our main practice areas

Foreign Investments | Incorporation and Company Maintenance | General Corporate and Commercial | Due Diligence | Mergers and Acquisitions | Joint Ventures and Production Sharing Agreements | Investment Funds | Energy/Oil and Gas | Natural Resources/Mining | Banking | Project and Project Financing | Manufacturing | Education | Agriculture | Real Estate | Infrastructure | Construction | Telecommunications | Compliance / Regulatory | Licensing and Permits | Labour and Employment | Immigration | Taxation | Insurance | International Arbitration | Intellectual Property | Special Economic Zones

**Yangon Office:** Level 8A, Union Financial Center (UFC), Corner of Mahabandoola Road and Thein Phyu Road, Botahtaung Township, Yangon.

**Mandalay Office:** Room No. A-3 (2nd Floor) | Win Yin Mon Condo | 67th Street (31st x 32nd Street) | Chan Mya Thar Zan Township | Mandalay.



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