

MAIN TYPES OF BUSINESS VEHICLES IN MYANMAR

Companies in Myanmar are incorporated with the Directorate of Investment and Company Administration (**DICA**) under the Myanmar Companies Law 2017 (**MCL**). DICA oversees company administration and serves as the company registrar. The introduction of the new Myanmar Companies Online electronic filing system and company registry in August 2018 has created a relatively fast, simple and accessible process for incorporating new companies and managing compliance and filings for existing companies.

The following provides a brief summary of the main types of business vehicles available in Myanmar.

Private company limited by shares

As with most countries, the most common incorporated business vehicle is a private company limited by shares (**PCLS**). A PCLS is a separate legal entity that has the right to hold assets and enter into contracts in its own name. Shareholders are provided with limited liability (limited to the amount of their subscribed share capital). However, incorporating a company does come with the usual ongoing reporting and filing obligations, with much of the information filed with DICA being publicly available.

A PCLS need only have one director and one shareholder, although it must have at least one director who is ordinarily resident in Myanmar. It cannot have more than 50 shareholders.

Under the MCL, companies with no more than 35% foreign ownership are classified as “Myanmar companies”. The general intention is that “Myanmar companies” will be classified as locally-owned for foreign investment licensing purposes. However, in practice separate Ministries and agencies can set their own foreign investment and licensing criteria within their fields of responsibility. Classification as a “Myanmar company” by DICA therefore does not necessarily mean that a PCLS with minority foreign ownership can operate in every sector in which a 100% Myanmar-owned company can operate.

Public company limited by shares

A public company can have more than 50 shareholders and, subject to prospectus and disclosure requirements, can offer shares or other securities to the general public in order to raise funds. Public companies can also list on the Yangon Stock Exchange, subject to listing rule requirements.

Compared with a PCLS, a public company is subject to higher levels of regulatory oversight and higher reporting requirements. These higher standards are intended to provide greater protection to the potentially large number of minority shareholders of a public company.

Overseas corporation

Under the MCL, an “overseas corporation” is a company that has been incorporated outside of Myanmar. Overseas corporations can register with DICA and thereby obtain permission to directly carry on business in Myanmar. A registered overseas corporation is directly liable for its activities in Myanmar, compared with forming a subsidiary PCLS to provide the overseas parent with shareholder limited liability. Any profits made by the overseas corporation in Myanmar are direct revenue of the company. However, there is no withholding tax on outbound remittances of dividends from a Myanmar-incorporated subsidiary to an overseas parent company.

Registered overseas corporations are subject to similar reporting and filing requirements as apply to Myanmar-incorporated companies.

Unlimited company

The MCL allows for incorporation of unlimited companies, where the liability of shareholders or members for the company’s outstanding debts and obligations on liquidation is unlimited. In some jurisdictions, unlimited companies are exempt from requirements to file financial reports and therefore offer greater privacy to shareholders. However, this does not appear to apply under the MCL and, to the best of our knowledge, there are no unlimited companies in Myanmar at this stage.

Joint ventures

Joint ventures are relatively common in Myanmar, in particular as a mode of cooperation between foreign and

Myanmar investors. Investment regulations require minimum levels of Myanmar ownership in order for companies to operate in some sectors; joint ventures are therefore sometimes formed for regulatory as well as commercial reasons. Many joint ventures are incorporated, with a jointly-owned PCLS serving as an operating vehicle, potentially supported by a shareholders agreement or other contracts further detailing the joint venture relationship. Unincorporated joint ventures can also be formed under contract. Other forms of cooperative contractual arrangements, such as franchising and outsourced services arrangements, are also possible.

Sole proprietorship

Natural persons can directly own and undertake businesses as sole proprietors in Myanmar. This is common for small businesses, particularly Myanmar-owned businesses, but is usually not a practical option for foreign investors. A sole proprietor generally has less regulatory and reporting obligations as compared with a company. However, the sole proprietor will be personally responsible for all of the business's debts and liabilities, and separate arrangements would need to be made for continuation of the business following retirement or death of the proprietor.

Partnership

Partnerships are recognized in Myanmar law under the Partnership Act 1932. (A draft new Partnership Law has been prepared, but we have no indication at this stage as to when it is likely to be passed). While many Myanmar people undertake business initiatives in cooperation with friends, family and other collaborators, formal partnerships are not common at this time. Formation of a partnership requires a partnership agreement under which the partners agree terms for sharing in the profits of the business. Unlike a PCLS, partnerships do not provide limited liability; partners remain personally liable for any losses incurred by the partnership business. Partnerships should be registered with DICA in order to be able to enforce rights against third parties.

Trusts

Myanmar law also recognises trusts, which are governed by the Trust Act 1882. However, to the best of our knowledge, trusts are also seldom used at present and most likely not well understood in Myanmar.

Public company limited by guarantee

Public companies can be formed which do not have share capital. Instead, each member of the company gives a guarantee that if the company is liquidated the member will contribute a certain amount towards its liabilities. The amount of the guarantee can be nominal. This structure is sometimes used to form not-for-profit or charitable associations. The lack of share capital makes changes in the association's membership more straightforward (compared with share transfers), while the higher standards of reporting required from public companies provides greater protection for the members.

Trade association

Non-profit associations formed for the promotion of commerce or economic development can be registered with DICA under the MCL. While not a business vehicle per se, this type of incorporated association can be used to form chambers of commerce and industry or other trade promotion organisations.

Based in Yangon, Livingstons Legal is an independent corporate legal practice focusing on enabling the burgeoning Myanmar investment market. Our firm is staffed by local lawyers familiar with the business environment, laws, regulations and practices of Myanmar as well as international lawyers with expertise in inbound investment and cross-border transactions.

We offer a broad service commercial capability across industries, with a focus on market entry, investment, development and finance activities. Our senior lawyers have significant in-house experience, which gives Livingstons Legal a valuable commercial and practical perspective on providing legal services to both foreign and domestic businesses



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