

# INCORPORATING A PRIVATE COMPANY LIMITED BY SHARES IN MYANMAR

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As with most jurisdictions, the most common and practical form of business vehicle in Myanmar is a private company limited by shares (**PCLS**). The introduction of the Myanmar Companies Law 2017 (**MCL**) and the Myanmar Companies Online (**MyCO**) electronic filing system and company registry in August 2018 has created a faster, simpler and more accessible process for incorporating a PCLS with the Directorate of Investment and Company Administration (**DICA**). We set out below a brief overview of the key requirements and steps in the incorporation process, along with some post-incorporation considerations.

## Key Requirements

A PCLS:

- must have at least one shareholder and one director. Shareholders can themselves be incorporated entities, but only natural persons can serve as directors. A single natural person can be both the sole shareholder and sole director of a PCLS;
- must have at least one director who is ordinarily resident in Myanmar, which means residing in Myanmar for at least 183 days in any 12-month period. However, the resident director does not need to be a Myanmar citizen;
- must not have any more than 50 shareholders; and
- may have a company secretary, but secretaries are not compulsory.

The MCL does not impose any minimum capital requirements for the incorporation of a PCLS, nor any requirements for any minimum level of Myanmar ownership. However, local ownership and minimum capital requirements apply in relation to investment and operating permits and licences for various business and investment activities in Myanmar. If you are incorporating a PCLS to participate in an area that is subject to such requirements, you will need to structure the company's capital and ownership accordingly.

## Incorporation Process

While incorporation applications (and other company filings) can now be made online via MyCO, it is still possible to lodge hardcopy filings with DICA. The MCL also still requires that a hardcopy version of the incorporation application form be completed and signed on behalf of the incorporation applicant. An original signed copy of the hardcopy form must be retained at the company's registered office; if the incorporation application process is outsourced, the signed form can also serve as instructions to the outsourced service provider regarding the details to file in MyCO.

Most of the information required for an incorporation application can be submitted to DICA in English. The items of information required to be submitted comprise:

- the proposed name of the new company;
- personal details of each director of the company;
- personal details of the company secretary if the company will have a secretary;
- scanned copies of the Passport ID page for all foreign directors and of the National Registration Card of all Myanmar citizen directors (and of the company secretary, if there is one);
- the registered address of the company in Myanmar;
- the address of the principal place of business of the company, if that is different from the registered address;
- whether the company will have an ultimate holding company (that is, a holding company that controls the newly incorporated company, whether directly or via interposed entities) and, if so, the name, registration number and jurisdiction of incorporation of the ultimate holding company;
- the total number of shares in the company that will be on issue on incorporation and the currency in which those shares will be denominated – either USD or MMK;
- for each class of shares in the company that will be on issue on incorporation, the:
  - full title of the class of shares;
  - total number of shares in the class that will be issued on incorporation;
  - total amount that will be paid up on the shares in the class on incorporation; and
  - total amount that will be unpaid on the shares in the class on incorporation;
- personal details of each natural person shareholder of the company, along with details of the class(es) and number of shares that will be held by that person and the amounts paid up and unpaid on those shares;
- registration details of each incorporated shareholder of the company, along with details of the class(es) and number of shares that will be held by that incorporated entity and the amounts paid up and unpaid on those shares; and

- whether the company will adopt a constitution in the form of the template constitution prepared by DICA, or adopt its own constitution. If the company will adopt its own constitution, a copy of the constitution in Myanmar language (and also, optionally, in English) must be provided to DICA as part of the incorporation application.

Each director and the company secretary (if any) must consent in writing to act in those roles prior to incorporation. Each founding shareholder must also consent in writing to becoming a shareholder and agree to subscribe for the shares to be allotted to it as set out in the incorporation application. Original copies of the consents, and an original signed hardcopy of the incorporation application form, must be held at the company's registered office address (ideally as part of a company register file).

### Constitution

Under the MCL, Myanmar-incorporated companies have a single constitutional document that is simply called a "constitution". DICA has produced a template company constitution that can be readily adopted by new companies by nominating this as part of the incorporation application. If the founding shareholders wish to adopt a different form of constitution a Myanmar language copy of the constitution must be attached to the incorporation application (an English language copy may also be attached). (Note that the DICA template constitution only provides for the issue of ordinary shares; if the new company will have any additional classes of shares on incorporation then, at a minimum, the DICA template constitution will need to be amended to include details of the additional classes).

### Some Key Subsequent Obligations

The shareholders or directors of a PCLS may pass a resolution in writing without holding a meeting if all shareholders or all directors (as the case may be) sign a document containing a copy of the resolution and a statement that they are in favour of the resolution.

Companies with less than 30 employees and an annual revenue of less than MMK 50 million are defined as "small companies" under the MCL and are exempt from requirements to hold an annual general meeting (**AGM**) or to file audited accounts with DICA.

Other PCLS (that are not "small companies") are still required to hold an AGM within 18 months of the date of incorporation, and thereafter once per year after, with not more than 15 months in between the meetings. Audited financial statements of such companies must be presented and approved at the AGM.

Newly incorporated companies must file a first annual return confirming key particulars and information of the company within two months after incorporation. Further annual returns must be filed at least once each year thereafter and no later than one month after the anniversary of the company's incorporation.

Adoption of a new constitution or amendment of the existing constitution requires approval by a special resolution of shareholders (being a 75% majority resolution) and filing of notification of constitutional changes with DICA. Appointments and resignations of directors, changes in director details; allotments of new shares and transfers of existing shares must all be notified to DICA. However, in most instances only notification forms need be filed; original underlying documents are retained by the company.

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