



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



**THE NEW COMPANIES LAW**

**21 July 2018**

# **ELECTRONIC FILING SYSTEM “MyCO”**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

# ELECTRONIC FILING SYSTEM “MyCO”

*(The information on this and the following two slides is taken from a presentation held by DICA officers on 20 July 2018)*

- Without a form issued by DICA, no filing is possible
- Attachments may only be submitted if required by a form
- Filing effective once DICA has reviewed and approved (which is done automatically or manually, depending on the form)
- Fees may be paid online with credit card or MPU



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# **ELECTRONIC FILING SYSTEM “MyCO”**

- **Offline filing is still possible; in this case a DICA officer inserts the data into the system**
- **No more 5 year term: A company registration is valid indefinitely**
- **No more minimum capital requirements: Foreign companies do not require a USD 50,000 contribution (apparently)**
- **Existing companies will, upon re-registration, receive new registration numbers and electronic incorporation certificates**



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# ELECTRONIC FILING SYSTEM “MyCO”

- Incorporation certificate will not show if a company is a foreign company (no “FC” in the registration number) - but sighting the “company extract” would reveal that a company has foreign shareholders
- Company search is free; additional information has to be purchased



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

**RE-REGISTRATION OF A PRIVATE COMPANY  
LIMITED BY SHARES: RE-REGISTRATION  
FORM B-1**



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# RE-REGISTRATION FORM B-1

- Re-registration of a private company limited by shares
- Information to be provided:
  - Company name (in English; in Myanmar language optional)
  - Existing registration number
  - Foreign company?
  - Small company?
  - Name, nationality, N.R.C./passport no., gender, date of birth, residential address of each director (attach N.R.C./passport copy)



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# RE-REGISTRATION FORM B-1

- Name, nationality, N.R.C./passport no., gender, date of birth, residential address of the company secretary, if any (attach N.R.C./ passport copy)
- Address of the registered office in Myanmar
- Address of the principal place of business in Myanmar (if different from the registered office)
- Total number of shares
- Currency in which the company's share capital is denominated
- Does the company have an ultimate holding company?
- Information on the shareholders
- Model constitution or own constitution?



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# **RE-REGISTRATION OF A PRIVATE COMPANY LIMITED BY SHARES: SPECIFIC ITEMS**



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# FOREIGN COMPANIES

- A company registered in the Union in which foreigners own or control, directly or indirectly, an ownership interest of more than 35%
- “Ownership interest” = legal interest or interest held in trust in a company through (i) a direct shareholding, (ii) a direct or indirect shareholding in a second company or (iii) the direct or indirect control of the voting rights



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# FOREIGN COMPANIES

- However, officers in the following government departments have indicated that there are currently no plans to change the policy of classifying any company with the tiniest foreign ownership ratio as a foreign company:
  - Land Registration Department (registration of land ownership)
  - YCDC Land Administration Department (registration of land ownership)
  - Department of Trade (registration as importer/exporter)
  - Ministry of Hotels and Tourism (guesthouse license, tour operator license)



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# FOREIGN COMPANIES

- Road Transport Administration Department (planned licensing system for passenger transport)
  - Ship registry
  - Department of mines (small-scale mining)
- Hopes for additional foreign investment due to the new Companies Law are therefore most likely to a large extent moot. However, we will test after 1 August 2018 how a “65/35” company will be treated.



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# SMALL COMPANIES

- **Small company:** Company with not more than 30 employees and an annual revenue in the prior financial year of less than Ks. 50,000,000 (S. 1(c)(xxxix))
- Not required to have an annual general meeting (S. 146(e))
- Preparation of audited annual financial statements required for tax filing, despite exemption in the Companies Law (S. 257(c))



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# RESIDENCE REQUIREMENTS

- A **public company** must have at least one director who is a resident Myanmar citizen (S. 4(a)(vi)).
- A **private company** must have at least one director who is “ordinarily resident” in Myanmar (S. 4(a)(v)). This person may be a Myanmar citizen or a foreigner.
- An **overseas company** (rep office or branch) must have at least one “authorised officer” who is ordinarily resident in Myanmar (S. 1(c)(iii), 47(b)(iii)). This person may be a Myanmar citizen or a foreigner.



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# RESIDENCE REQUIREMENTS

- **Existing companies or branches/rep offices** have until 31 July 2019 to find an ordinarily resident director or authorised officer (S. 469(b), (c))
- It should therefore **not be necessary** to include an ordinarily resident director or authorised officer in the re-registration form



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# RESIDENCE REQUIREMENTS

- A person is “**ordinarily resident**” if this person is either a (i) permanent resident or (ii) person residing in Myanmar for at least 183 days in each 12 month period commencing from 1 August 2019 (existing company) or the date of registration (new entity); S. 1(c)(xix).
- Existing companies, rep office and branches have until 31 July 2019 to find an ordinarily resident director or authorised officer (S. 469(b), (c)).
- Therefore, there should be no need to include an ordinarily resident director or authorised officer in the re-reg. forms.



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# RESIDENCE REQUIREMENTS

- Regulation 11 Companies Regulations 2018 (so far, only a draft seems to have been published):
  - Resignation of the last remaining ordinarily resident director is invalid;
  - DICA may order shareholders to appoint an ordinarily resident director;
  - Shareholders may become liable for debts of the company if the company operates without ordinarily resident director for more than 6 months.



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# RESIDENCE REQUIREMENTS

- **Consequences for failure by an overseas corporation (branch or rep office) to appoint an ordinarily resident authorised officer not specified - possibly a penalty of Ks. 5,000,000? (S. 48)**



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# **NOMINEE DIRECTORS/AUTHORISED OFFICERS**

- **Quite risky for the nominee as a director or authorised officer (i) may become subject to various penalties under the new Companies Law, (ii) risks being sued by third parties and (iii) may, in a worst-case scenario, become personally liable for debts of the company**
- **Furthermore, the nominee may not resign unless a new ordinarily resident director is appointed**



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# NOMINEE DIRECTORS/AUTHORISED OFFICERS

- A nominee should therefore
  - (i) request a deposit which he may use to discharge costs incurred in his position as nominee;
  - (ii) insist on the principal appointing at least one more director (non-resident) who will be in charge of the actual business of the company;
  - (iii) require the principal to provide all information and documents in time that are required to make statutory filings; and
  - (iv) request an indemnity agreement.



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# NOMINEE DIRECTORS/AUTHORISED OFFICERS

- **However, S. 181(a):** A company and a group company may not indemnify a director against a liability owed to the company or the group company. This probably means that an indemnity agreement against penalties imposed on a director is void.
- We provide nominee directors therefore only to clients that also retain us as company secretary. Depending on the business of the company, we may additionally request the client to retain us for other compliance-related services, in particular tax and labour law services.



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# SHARE CAPITAL

- The new Companies Law abolishes the authorised capital and the par (nominal) value
- Example: Lincoln Legal Services (Myanmar) Ltd. as currently under the Companies Act 1914:
  - Authorised capital USD 100,000, divided into 10,000 ordinary shares of USD 10 each → **abolished**
  - The company has issued 1,250 ordinary shares to Sebastian and 1,250 ordinary shares to Nyein Chan Zaw (total: 2,500 ordinary shares) for which they have contributed a paid-up capital of USD 25,000 in total → **kept**



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# SHARE CAPITAL

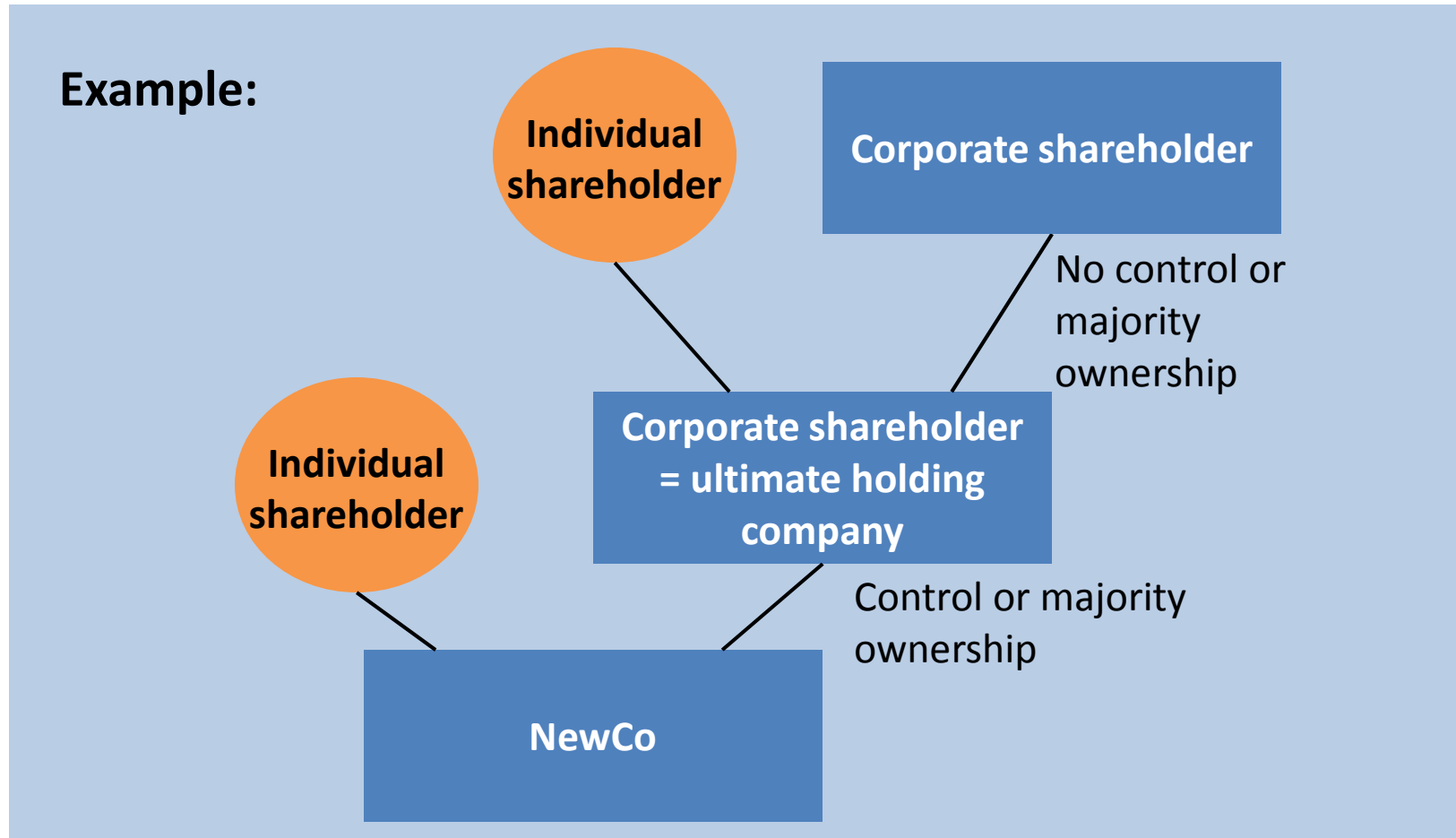
- In the re-registration form, Lincoln Legal Services (Myanmar) Ltd. would write:
  - Total number of shares: 2,500
  - Currency in which the share capital is denominated: USD
  - Total number of ordinary shares: 2,500
  - Total amount paid on these shares: USD 25,000
  - Sebastian's shares: 1,250 ordinary shares; total amount paid: USD 12,500
  - Nyein Chan Zaw's shares: 1,250 ordinary shares; total amount paid: USD 12,500



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# ULTIMATE HOLDING COMPANY

Example:



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# ULTIMATE HOLDING COMPANY

- **Control:** Controlling the composition of the board of directors (in particular, ability to appoint more than half of the directors) or more than 50% of the votes in a shareholders meeting
- **Majority ownership:** Holding more than 50% of the shares or entitlement to more than 50% of the dividends



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# SHARE CLASSES

- **Ordinary shares (“ORD”)**: One vote; equal share in dividends; equal share in the distribution of assets if the company is wound up
- **Preference shares (“PRF”)**: All shares that are not ordinary shares. Typically, preference shareholders have the right to (i) a fixed dividend distribution if there is a profit, (ii) a priority claim for the repayment of the capital contribution over other shareholders if the company is insolvent, but (iii) no voting rights



# SHARE CLASSES

- **However**, the constitution may freely customise the rights attached to preference shares, in particular:
  - No right to repayment of the capital contribution, or conversely, priority right for the repayment of the capital contribution
  - No, or disproportionate, right to the assets of the company if it is wound up
  - No dividend payment because no profit in a certain year? → Right to get these dividends later



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# SHARE CLASSES

- **No voting rights; voting rights only subject to certain conditions; disproportionate voting rights**
- **Priority of payment of capital and dividends over other shareholders**
- **Option of the shareholder to sell the preference shares to the company; or option of the company to purchase the preference shares (“redeemable shares”)**



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# SHARE CLASSES

- **Class A, B and C shares, employee's shares, management shares and redeemable (preference) shares** are types of preference shares



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# CONSTITUTION

- Company must decide whether to use DICA's model constitution or its own constitution
- "Own constitution" would include a company's current memorandum and articles → **may be clever to keep as it contains the company's objects (which, e.g., licensing authorities might want to see); keeping the company's objects after 31 July 2019 requires special resolution and filing of form I-14**
- Own constitution must be in the Myanmar language; English translation may be provided



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# CONSTITUTION

- Drafting a tailor-made constitution in particular recommendable for joint ventures
- Special resolution of the shareholders is required for existing companies to adopt the model constitution or a tailor-made constitution (S. 17)



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

**RE-REGISTRATION OF AN OVERSEAS  
CORPORATION (BRANCH OR REP OFFICE):  
RE-REGISTRATION FORM B-6**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

## RE-REGISTRATION FORM B-6

- Re-registration of a branch or rep office (“overseas corporation”)
- Information to be provided:
  - Name, jurisdiction of incorporation and registration number of the headquarters
  - Name and registration numbers of the branch or rep office in Myanmar
  - Name, address and personal information of all directors of the headquarters



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## RE-REGISTRATION FORM B-6

- Name, address and personal information of the company secretary of the headquarters company (if any)  
**(If the company secretary is not an individual?)**
- Name, address and personal information of the authorised officer ordinarily resident in Myanmar  
**(It should be possible to leave this blank as an existing branch or rep office is not required to have an authorised officer until 31 July 2019, S. 469(c))**
- Address of registered office in Myanmar



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## RE-REGISTRATION FORM B-6

- Address of principal business if different from registered office
- Address of principal place of business or registered office of headquarters
- Address of registered office in Myanmar
- Financial year end date of the headquarters



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# RE-REGISTRATION FORM B-6

- Documents to attach:
  - Copy of N.R.C. or passport of ordinarily resident authorised officer
  - Evidence of incorporation of headquarters
  - Copy of the constitution of the headquarters
  - Myanmar translation thereof
  - English summary thereof (if not originally in English)



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

# **FILING REQUIREMENTS OF A PRIVATE COMPANY LIMITED BY SHARES**



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# REGULAR FILINGS OF A PRIVATE COMPANY

- Annual return (specified form) - *former “form E”, but easier to fill in*
  - To be filed within 2 months after incorporation, thereafter annually (but not more than 15 months apart)
  - Confirmation (item by item) that the corporate information registered with DICA is correct
  - Includes date of the last annual general meeting of shareholders



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# REGULAR FILINGS OF A PRIVATE COMPANY

- Explains the principal activities of the company with the help of the Standard Industrial Classification (SIC) code
- Contains MIC permit or endorsement number (if any)



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# REGULAR FILINGS OF A PRIVATE COMPANY

- Financial statements: **Not required to be filed with DICA (S. 266(c))**



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# EVENT-DRIVEN FILINGS OF A PRIVATE COMPANY

*(The following list includes the most important filings, but is not exhaustive.)*

- Registration of a new company (form A-1)
- Re-registration of an existing company (form B-1): Until 31 January 2019
- Amendment of the constitution (form C-1): Within 28 days after the special resolution



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# EVENT-DRIVEN FILINGS OF A PRIVATE COMPANY

- Name change (form C-2): Within 28 days after the special resolution
- Change to the share capital or register of members (form C-3): Within 21 days after the event (*this covers in particular share transfers - former “share transfer forms” - and a capital increase by the issue of new shares - former “form 6”*)
- Change of the registered office or principal place of business (form C-4): Prior to changing the registered office (*attach consent of the occupant if the occupant is not the company*)



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# EVENT-DRIVEN FILINGS OF A PRIVATE COMPANY

- Relocation of the company's statutory registers (form C-10):  
Within 21 days after the relocation
- Particulars of directors and secretary (form D-1): Within 28 days after the change (*this covers in particular: Appointment of new and resignation of existing directors - former "form 26"; appointment of a new and removal of the existing company secretary; change in the personal details of a director or secretary*)
- Registration of a mortgage or charge (form H-1): Within 28 days after its creation



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# **FILING REQUIREMENTS OF A BRANCH OR REP OFFICE (“OVERSEAS CORPORATION”)**



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# REGULAR FILINGS OF AN OVERSEAS CORPORATION

- Annual return (form E-7): Within 28 days after the end of the financial year of the headquarters
- Filing of the financial statements of the headquarters (form E-8): Every year and at intervals of not more than 15 months



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# EVENT-DRIVEN FILINGS OF AN OVERSEAS CORP.

- Registration of the overseas corporation (form A-8): Before starting to “carry on business” in Myanmar
- Re-registration of an existing branch or rep office (form B-6): Until 31 January 2019
- Name change (form E-1), amendment of the constitution (form E-2), change of the particulars of the director(s) or secretary (form E-3), change of the address (form E-4) of the headquarters: Within 28 days after the event



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# **EVENT-DRIVEN FILINGS OF AN OVERSEAS CORP.**

- **Change of the registered office or principal place of business of the branch or rep office in Myanmar (form E-5): Prior to changing the address**
- **Change of the particulars of the authorised officer (form E-6): Within 7 days after the event**
- **Notice of ceasing to carry on business in Myanmar (form E-9): Within 21 days after ceasing to carry on business in Myanmar**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

# **DOCUMENTS TO BE KEPT BY A PRIVATE COMPANY LIMITED BY SHARES**



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# MAINTAINING DOCUMENTS - PRIVATE COMPANY

- **Incorporation/re-registration:**
  - **Duplicate originals of the application for company incorporation**
  - **Originals of the written declarations of consent of every shareholder, director and secretary**
  - **Company's constitution**



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# MAINTAINING DOCUMENTS - PRIVATE COMPANY

- Statutory registers:
  - Register of members
  - Register of option holders and similar registers
  - Register of directors
  - Register of company secretaries
  - Register of mortgages and charges



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# MAINTAINING DOCUMENTS - PRIVATE COMPANY

- **Registered office:**
  - **Consent of the occupant of the premises if they are not occupied by the company**
- **Meeting minutes**
  - **Books for meeting minutes containing minutes of the general meetings of shareholders and of the board of directors; resolutions of the shareholders and the directors - recording must be done within 21 days**



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# MAINTAINING DOCUMENTS - PRIVATE COMPANY

- **Financial records:**
  - **Written financial records (e.g., vouchers, bank statements, account book, cash book, contracts, asset list, correspondence about financial matters)**
  - **The financial statements (balance sheet, profit and loss statement, cash flow statement)**
  
- **Mortgages and charges**
  - **Copies of every instrument creating a mortgage or charge**
  - **Register of mortgages and charges**



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# **DOCUMENTS TO BE KEPT BY A BRANCH OR REP OFFICE (“OVERSEAS CORPORATION”)**



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## **MAINTAINING DOCUMENTS - OVERSEAS CORP.**

- **Duplicate originals of the application for registration with all accompanying documents**
- **Original written consent of the authorised officer**
- **“Overseas corporation’s record”**
- **Copy of any instrument creating any mortgage or charge requiring registration**
- **Register of mortgages and charges**



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# MAINTAINING DOCUMENTS - OVERSEAS CORP.

- **Written financial records (e.g., vouchers, bank statements, account book, cash book, contracts, assets list, correspondence about financial matters) with respect to financial transactions in Myanmar**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

# CONTACT

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

- Sebastian Pawlita, Managing Director  
Phone: +95-9-262546284 (English)  
E-Mail: [sebastian@lincolnmyanmar.com](mailto:sebastian@lincolnmyanmar.com)
- Nyein Chan Zaw, Director  
Phone: +95-790488268 (Myanmar)  
E-Mail: [nyeinchanzaw@lincolnmyanmar.com](mailto:nyeinchanzaw@lincolnmyanmar.com)

Office address: La Pyi Wun Plaza, Room 409 (4<sup>th</sup> Floor), 37 Alan Pyu Pagoda Road, Dagon Township, Yangon

Web: [www.lincolnmyanmar.com](http://www.lincolnmyanmar.com)



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