

# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

## TRANSFERRING SHARES OF A COMPANY INCORPORATED IN MYANMAR

### 1. Regulatory approval

Share transfers in regulated sectors (e.g., telecommunications) may require the respective regulator's prior approval.

The transfer of shares of a company with an investment permit or endorsement from the Myanmar Investment Commission ("MIC") requires the MIC's prior approval if more than 50% of the company's shares are transferred (rule 191 [Myanmar Investment Rules](#)). It takes about 1 month to obtain this approval.

The transfer of shares of a company with a permit from the Thilawa Special Economic Zone Management Committee requires the Management Committee's prior approval which takes about 1 month to obtain.

### 2. Requirements for a valid share transfer under the Myanmar Companies Law

A valid share transfer requires the following (section 83 [Myanmar Companies Law](#)):

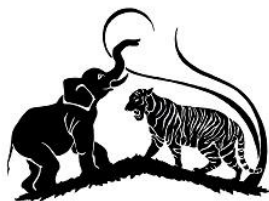
- Delivery of an instrument of transfer (usually referred to as "share transfer form") to the company, duly revenue-stamped and signed by both transferor and transferee;
- return of the transferor's share certificate (if any) to the company;
- declaration whether as the result of the share transfer an overseas corporation will acquire or cease to have an ownership interest in the company (this declaration is usually included in the share transfer form); and
- entry of the share transfer in the company's internal register of members (which the company is supposed to maintain according to section 90(c) Myanmar Companies Law).

### 3. Revenue-stamping the share transfer form

The share transfer form must be revenue-stamped with 0.1% of the value of the shares transferred (no. 62(a) Schedule I to the Stamp Act).

In practice, this is 0.1% of the portion of the paid-up capital shown in the company's "company extract" that is being transferred (minimum amount; the tax authorities do not accept any lower value).

If, however, the parties write a higher consideration in the share transfer form, the stamp duty is 0.1% of the consideration so shown.



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According to section 17 [Stamp Act](#), revenue-stamping has to be done before or on the signing date shown in the share transfer form (but in practice not later than the date on which the share transfer is registered with DICA, as tax officers may check this online and routinely consider a document to be presented “late” if it is presented after the deal is done).

If the share transfer form is presented later, the tax authorities will levy a penalty of 3x the applicable stamp duty for late stamping, in addition to the stamp duty.

Revenue-stamping must be done in person. The following documents are usually required:

- Share transfer form;
- print-out of the company’s certificate of incorporation and company extract;
- copy of the transferor’s and transferee’s passports or national registration cards (in case of individuals) or company extracts or their foreign equivalent with an English translation (in case of companies);
- if transferor and/or transferee are companies, resolution of the respective board of directors approving the share transfer (with English translation if in a foreign language), and copies of the passports of at least one of the directors of the respective company who signed the resolution;
- resolution of the board of directors of the company approving the share transfer;
- power of attorney for the person going to the tax office and handling the revenue-stamping (may be signed by a director of the transferor, the transferee, or the company);
- copy of the passport of the director having signed the power of attorney.

The reason for this rather long list of documents is that at least some tax officers check them quite carefully to avoid fraudulent share transfers by dishonest “transferees”.

#### **4. Registration of the share transfer with the Directorate of Investment and Company Administration (DICA)**

Within 21 days from the entry of the share transfer in its internal register of members, the company must notify DICA of the share transfer (section 86(a) Myanmar Companies Law). This is done online on <https://myco.dica.gov.mm> with form C-3.



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### 5. Issuance of a share certificate

Within 28 days from the entry of the share transfer in the company's internal register of members, the company shall issue a share certificate to the transferee with the prescribed contents (section 89 (b) Myanmar Companies Law), revenue-stamped with MMK 50 (no. 19 Schedule I to the Stamp Act).

### 6. Capital gains tax (if any)

If there is a capital gain from the share transfer, the transferor has to file a [transaction capital gains tax return](#) and pay the capital gains tax (10% of the capital gain) within 30 days from the earlier of (i) the signing date of the sales contract or (ii) the entry of the share transfer in the company's internal register of members.

Furthermore, the transaction has to be included in the annual [consolidated capital gains tax return](#) which has to be filed within 3 months from the end of the financial year.