



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

PRIMER ON SHAREHOLDER AGREEMENTS

Up to date as of 13 October 2024

Shareholder agreements in Myanmar are typically written in English, in Burmese, or in both languages. There is no mandatory language requirement. However, when an agreement not written in Burmese is presented as evidence in court, it is recommendable to provide an accurate translation to Burmese (certified as correct by a notary) as many judges are not able to read and understand English.

Like most other agreements, shareholder agreements must be revenue-stamped to be admissible as evidence in court. We understand that the Internal Revenue Department is of the opinion that the applicable stamp duty amount is MMK 150,000 as per no. 5 (c) Schedule I to the Stamp Act.

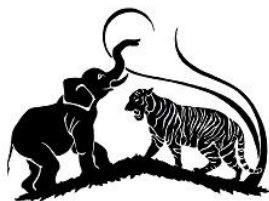
Typically, shareholder agreements cover the following topics. If provisions in the shareholder agreement deviate from non-mandatory provisions of the Myanmar Companies Law or the company's constitution, the company's constitution has to be amended to include these provisions.

1. Introduction and purpose

- Parties to the agreement
- Purpose of the agreement
- Business that the company is supposed to engage in
- If a new shareholder joins: Date and circumstances under which the shareholder is joining

2. Rights and obligations of the shareholders

- Allotted shares: Number, class, and rights attached to the shares being issued (in Myanmar, typically, "ordinary shares" carrying one vote per share and entitling their holders to participate equally in dividends and in the company's assets if the company is wound up)
- Voting rights: Do the shares carry equal or differential voting rights?
- Right to dividends: Are the shareholders entitled to receive dividends if the company is profitable, or is dividend distribution in the discretion of the directors or tied to other conditions?
- Access to information: Should the holders of certain share classes only have limited or no access to financial and operational information?



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3. Capital contributions and financing

- Are shareholders required to contribute additional funds in the future (e.g., for business expansion or emergencies)?
- Process for additional equity or loan financing, if any.

4. Share transfer restrictions

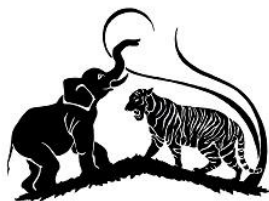
- How are shareholders restricted from selling their shares (it is recommendable to provide for sensible restrictions that (i) allow a shareholder to exit the company, but also (ii) allow the remaining shareholders to prevent the sale to an outsider that they might not like)
- Pre-emption rights: Should existing shareholders have the right to buy a leaving shareholders' shares before he sells them to an outsider?
- Lock-in periods: Specify any restrictions, if any, on selling shares for a certain period.
- Approval process: Detail the process for approving share transfers.
- Permitted transfers: Include rules for transferring shares to family members or affiliates.

5. Exit provisions

- Buyout clause: Under what circumstances (if any) may the other shareholders force a shareholder to leave the company (by selling his shares to the other shareholders or back to the company)?
- Valuation methods: How will the shares be valued in case of a buyout?
- Drag-along/tag-along rights: Should majority shareholders be able to compel minority shareholders to join in a sale of the company, or should they not? Conversely, should minority shareholder be able to join in a sale of the company initiated by the majority shareholders on the same terms and conditions?

6. Roles and responsibilities

- Define the roles the shareholder will play in the company, such as serving on the board, providing specific expertise, providing specific contacts, or providing specific assets
- Specify time commitments or management duties, if any



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7. Management and decision-making

- Composition of the board of directors: How are board seats allocated? Do specific shareholders have the right to appoint directors (and if yes, how many)? Is there an upper limit on the number of directors?
- Reserved matters: List major decisions that require shareholder approval (e.g., mergers, acquisitions, or large capital expenditures)
- Voting thresholds: Specify voting requirements for key decisions (e.g., simple majority, 3/4 majority, unanimous decision)

8. Non-compete and confidentiality

- Non-compete clause: To what extent should shareholders be prevented from competing with the company during their involvement, and after their involvement (for how long)?
- Confidentiality clause: To what extent should a shareholder be prevented from divulging or using for his own benefit the company's proprietary information? Should there be any penalties?

9. Dispute resolution

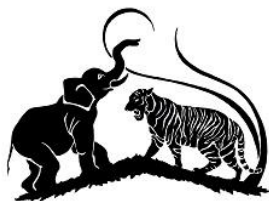
- Processes for resolving disputes among shareholders, such as mediation, arbitration, or court jurisdiction (in Myanmar usually: court jurisdiction, or arbitration in Singapore if foreigners are involved and the investment is massive)
- Deadlock resolution: E.g., casting vote for a shareholder in specific circumstances, appointing a mediator, "Russian roulette"/"Texas shoot-out", put option/call option, winding-up

10. Termination and exit strategy

- Under which circumstances may the agreement be terminated (e.g., mutual agreement, prolonged business failure, insolvency)?
- Procedures for handling share ownership in the event of a shareholder's death, incapacity, or insolvency.

11. Dilution protection

Should there be mechanisms to enable minority shareholders to preserve their ownership percentage (e.g., right to purchase shares if the majority shareholders vote for the company to issue new shares)?



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12. Representations and warranties

- Representations and warranties (if any) by the shareholders about their ability to conclude the agreement, their financial capacity, their business experience, etc.
- If a new shareholder joins: Representations and warranties (if any) by the company and/or other shareholders about the company's financial health, operations, and ownership structure

13. Force majeure clause

It is important to have a force majeure clause that suspends the obligations of the parties in unforeseeable and unpreventable circumstances such as military action, civil unrest, acts by the military government, natural disasters, epidemics, etc.

14. Miscellaneous

- Governing law and jurisdiction
- Procedures to amend the agreement
- Duration of the agreement and any renewal terms