

Myanmar Insight

Investment

2018

NEW NOTIFICATION ON WHOLESALE AND RETAIL INVESTMENT IN MYANMAR

On 9th May 2018, the Notification 25/2018 (the “**MOC Notification**”) was passed by the Ministry of Commerce and Trade (“**MOC**”) developing Myanmar’s investment regulations. By permitting wholesale and retail sale and distribution for foreign companies and joint venture companies (“**JV**”), the Myanmar Government seeks to strike a better balance between promoting investment and protecting Myanmar interests with the transparent objectives of creating jobs, extending the choice of high quality goods at lower prices for the citizens in a way that does not cause damage to local owners and small and medium sized enterprises. The outcome is a clearer regulation and a more detailed list of the expectations of the MOC in terms of wholesale and retail investment that will allow foreign investment in this type of activity. However, a few uncertainties remain but will eventually be cleared through the practice and internal policies of the DICA and the MOC.

Executive Summary

The Notification 25/2018...

- Applies to both foreign and domestic investment
- Extends the possibility for foreign companies to enter into trading activities in Myanmar
- Details conditions and the process to obtain a retail or wholesale business permit
- Sets a minimum investment amount to obtain a retail or wholesale business permit
- Restricts opportunities provided in requiring a minimum size of store to obtain a business permit for retail or wholesale
- Only allows companies with an MIC Permit or an MIC Endorsement to obtain the business permit

BACKGROUND

Until recently, foreign companies were not allowed to enter into trading activities in Myanmar. “Trading activities” was understood to include import, export, distribution, retail and wholesale activities from which income is generated.

This prohibition and the definition of trading activities were not provided for by laws or regulations but resulted from a Ministry of Commerce unwritten policy, in place since 2002.

The Notification No. 15/2017 of the Myanmar Investment Commission dated 10th April 2017 provided an exception to the ban on trading activities above-mentioned: foreign investors were able to enter into retailing businesses and wholesale businesses. However, this possibility required the approval of the MOC and there was no detailed information about the requirements to obtain this approval.

As a current practice, the DICA and the MOC allow foreign service companies to provide materials and other goods to their clients without any licence. However, the materials and goods provided have to be strictly linked and necessary for the purposes of the service activity of the companies. Moreover, companies also need to obtain the authorization of the MOC and work with a Myanmar licensed company to import the above-mentioned goods.

The issuance of the MOC Notification on last 9th May provided detailed requirements necessary to obtain a retail or a wholesale business permit that will extend the possibilities given to foreign companies to enter in trading activities.

REQUIREMENTS FOR THE WHOLESALE AND RETAIL ACTIVITIES

Amount of the investment

A minimum amount of capital is required to engage in those activities.

The MOC Notification lists different requirements depending on the type of company involved as follows:

- (i) 100% foreign-owned companies;
- (ii) JV companies where Myanmar citizens have 20% of the shares or more in the company;

- (iii) JV companies where Myanmar citizens have less than 20% of the shares in the company; and
- (iv) 100% Myanmar-owned companies.

The minimum amount of investment (capital requirement) will then depend on the type of activity sought and the type of company involved:

	Wholesale	Retail
100% foreign-owned companies	USD 5 million	USD 3 million
JV in which Myanmar citizens have 20% of the shares or more in the company	USD 5 million	USD 3 million
JV in which Myanmar citizens have less than 20% of the shares in the company	USD 2 million	USD 700,000
100% Myanmar-owned companies	No requirement	No requirement

These minimum investment requirements do not include the land rental value.

Size of the store

The MOC Notification also limits the number of companies that may apply for such permit by imposing a restriction on the size of the store in which the company will operate its retail or wholesale activities.

However, this restriction only applies to 100% foreign-owned companies and joint-venture companies.

These two types of companies will have to operate their retail or wholesale activity in a minimart or convenience store with a floor area of not less than 929 square meters.

APPLICATION FOR THE PERMIT

The MOC Notification lists two processes for the companies to apply to the MOC to obtain a retail or wholesale business permit. It also details one situation where a company does not need to register:

- (i) the 100% Myanmar-owned companies operating a retail or wholesale business with an initial capital amount of less than USD 700,000 are not required to register their retail or wholesale business.
- (ii) the 100% Myanmar-owned companies established before the date of the issuance of the MOC Notification and that initially invested USD 700,000 or more in the capital for the retail or wholesale activity may apply for the registration of a retail or wholesale business with the following documents only:
 - Company registration card;
 - List of groups of goods which are being distributed through retail or wholesale;
 - Detailed business plan specifying the investment amount, the location and the area of the business;
 - Distributed goods and a detailed business plan if the distribution is done at more than one location.

In this specific case, the application for the registration has to be made by the company within 150 days following the date of the issuance of the MOC Notification.

Finally, for all other types of companies registered before or after the issuance of the MOC Notification, the application to obtain a retail or wholesale business permit requires the following documents:

- Company registration card;
- MIC Permit or MIC Endorsement;
- List of groups of goods which are being distributed through retail or wholesale (in each location where the goods are distributed);
- Detailed business plan specifying the investment amount, the location and the area of the business;
- Recommendation from the relevant city development committee or township

development committee of the relevant Region or State.

Therefore, the main requirement to obtain this retail or wholesale business permit is to possess an MIC Permit or an MIC Endorsement.

GENERAL REQUIREMENTS AND PROHIBITIONS

The MOC Notification requires from all companies to:

- (i) respect the regulations relating to unfair competition;
- (ii) pay the specified duties with regard to the import or distribution of goods.

Moreover, relating to the retail or wholesale business, companies that operate in this field shall:

- (i) distribute safe and standard goods;
- (ii) not distribute prohibited items;
- (iii) provide guarantee services for sold items;
- (iv) avoid an impact on the environment.

Finally, companies operating under a retail or wholesale business permit have to comply with the regulations applicable in the service sector they are working in.

CONTROL AND PENALTY

The MOC Notification provides that an inspection may be ordered by the MOC and the relevant department, in order to check:

- the compliance between the performance of the company and the business plan provided to the MOC;
- the development of the distribution sector.

The MOC Notification provides that if the company does not comply with all the requirements provided in the Notification, action may be taken against the company in accordance with the MOC regulations.

TYPES OF GOODS

The MOTC has indicated under a “Newsletter 3/2018” that [only] some types of goods were covered.¹

¹ 1. Consumer Product (including Clothing, Watches, Cosmetic); 2. Foods Products (a) Agricultural Products, i.e. except the product

which restricted in accordance with the requirement of State); (b) Fishery Products; (c) Animal Product; (d) Fast Food Product; (e)

UNCERTAINTIES ON THE MOC NOTIFICATION

There are several uncertainties that remain regarding the MOC Notification.

Firstly, the only two words defined by the MOC Notification are retail and wholesale, being respectively “*the sale of goods in low quantity purchased by citizens for consumption and not for resale*” and “*the sale of goods in large quantity purchased by retailers or manufacturers*”.

The MOC Notification does not provides more information about the “low” and “large” quantity that the citizens, retailers and manufacturers need to purchase to qualify the business as retail or wholesale.

Furthermore, the actions that may be taken by the MOC and the relevant department in the situation where a company that obtained a

retail or wholesale business permit does not comply with the regulations applicable are not detailed in the MOC Notification.

HOW CAN AUDIER & PARTNERS (“A&P”) HELP

A&P, is an international law firm which has expanded its operations to Myanmar and is providing professional support and assistance to clients interested in doing business and investing in these newly emerging markets. We provide first rate advice in corporate and commercial law, mergers and acquisitions, banking and finance, international trade, legal reform, institutional support, and dispute resolution. Please contact us if you have question about potential investment in Myanmar.

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The information provided is for information purposes only and is not intended to constitute legal advice. Legal advice should be obtained from qualified legal counsel for all specific situations.

Soft-drinks; (f) Domestic Alcoholic Beverage; 3. Household Products, i.e. including ceramic and glasses; 4. Kitchen Used Products; 5. Medical Products and Equipment; 6. Animal Foods and Medicine; 7. Stationary; 8. Furniture; 9. Sports related Products; 10. Communication Equipment, i.e. camera and Phones; 11. Electronic Products; 12. Construction Products and Equipment; 13. Electricity Products; 14. Chemical Products for Manufacturing Business; 15. Seeds, Agricultural Products; 16. Machinery for

Cultivating; 17. Different Kinds of Machines and related machinery; 18. Bicycles; 19. Motor-bicycles and related parts; 20. Spare part for Motor Car; 21. Toys; 22. Home Decorations Materials, i.e. Plants and Flowers; 23. Gifts and Handicrafts; 24. Artwork, Musical Instruments and related products;