



Yangon, 15th October 2019

Investment in a wholesale and/or retail business in Myanmar

1. Market access

Foreign-invested companies are allowed to invest in a wholesale and/or retail business in Myanmar according to the following provisions:

- Sections 42(d), 43 Myanmar Investment Law in combination with section 1(D) no. 8 Myanmar Investment Commission Notification 15/2017 which allows foreign investment in the wholesale and retail sector subject to the approval of the Ministry of Commerce
- Ministry of Commerce Notification 25/2018 dated 9th May 2018
- Ministry of Commerce Newsletters 2/2018 and 3/2018 dated 26th July 2018

In a nutshell, foreign investors may register a 100% foreign-owned wholesale and/or retail business subject to the following conditions:

- (a) **Minimum investment amount:** USD 5 million (wholesale); USD 3 million (retail); USD 8 million (both); the minimum investment amount may be contributed in installments as follows: 50% within 30 days after issuance of the (temporary) wholesale registration certificate and/or retail registration certificate; 30% in the second year and 20% in the third year
- (b) **Minimum floor space:** “adequate floor space” for wholesale; 929 square metres for retail
- (c) **Goods that may be imported and traded:** The goods that may be imported and traded are specified in Ministry of Commerce Newsletter 3/2018.

Special rules apply in the Thilawa Special Economic Zone.

100% Myanmar-invested companies as such do not require permission from the Ministry of Commerce to engage in wholesale and/or retail and are not subject to minimum capital or floor space requirements. They are, however, required to register with the Ministry of Commerce if their initial investment amount is USD 700,000 (or an equivalent MMK amount) or higher.

Joint ventures are subject to the same restrictions as 100% foreign-owned companies with the exception that the minimum investment amount is lower, depending on the foreign ownership ratio:



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	80.1%-100% foreign ownership	0.1%-80% foreign ownership	0% foreign ownership
Wholesale	USD 5 million	USD 2 million	0
Retail	USD 3 million	USD 0.7 million	0

It should be noted that foreign investors may open a retail outlet within a department store without observing minimum capital and minimum floor space requirements and without obtaining a registration certificate from the Ministry of Commerce, provided that the department store operator has obtained a retail registration certificate from the Ministry of Commerce for the entire department store.

2. Process for foreign-invested companies

In essence, the following steps are required in order to set up a foreign-invested wholesale and/or retail business (outside of the Thilawa Special Economic Zone - special rules apply in the SEZ):

- (a) **First step:** Secure land/business facility, negotiate lease agreement
- (b) **Second step:** Obtain Myanmar Investment Commission (“MIC”) permit or endorsement
- (c) **Third step:** For very big projects, have a specialised company prepare an environmental impact assessment report or initial environmental examination
- (d) **Fourth step:** Obtain exporter/importer registration certificate from the Ministry of Commerce
- (e) **Fifth step:** Revenue-stamp and register lease agreement
- (f) **Sixth step:** Apply for construction permit and construct business facility (if not there yet)
- (g) **Seventh step:** Obtain municipal business permit and recommendation letter from the city or township development committee
- (h) **Eighth step:** Obtain a wholesale and/or retail registration certificate from the Ministry of Commerce
- (i) **Ninth step:** Depending on the goods to be sold, obtain other licenses



2.1. Securing land/business facility, negotiating a lease agreement

(a) Foreign ownership restrictions

The Transfer of Immovable Property Restriction Law from 1987 prohibits foreign ownership of immovable property and restricts the term of a lease of immovable property to one year if the tenant is a foreigner. According to administrative practice, the definition of “foreigner” includes companies registered in Myanmar if one share or more than one share are held by a foreign individual or entity. This administrative practice has not changed so far, in spite of a new Myanmar Companies Law - which provides that a company with a foreign ownership ratio of up to 35% is to be treated as a 100% Myanmar-owned company - having entered into effect on 1 August 2018.

If a foreign investment requires land (e.g., to build a supermarket) or premises that the investor wishes to lease for longer than one year (e.g., a warehouse), the investor has to obtain an investment permit or endorsement from the Myanmar Investment Commission (MIC) which overrides the prohibition on leasing land to foreigners in excess of one year. Foreign ownership of land is not allowed in any circumstances.

In contrast, Myanmar investors (individuals and 100% Myanmar-owned companies) have the option of leasing or purchasing land and/or business facilities.

(b) Leasing land from public entities

Immovable property (land with or without buildings) can be leased from public entities such as a ministry. Such a lease must at least theoretically go through a tender process (paragraph 35 President’s Office Directive No. 1/2017 dated 10 April 2017). In practice, public entities seem to lease immovable property to investors without conducting a tender. In any case, the investor should ensure that the land is (i) recorded as government land with the land record department and (ii) not subject to a dispute (e.g., with dispossessed former owners or competing public entities), and that (iii) the lease has gone through the public entity’s internal approval mechanism (often, cabinet - i.e., Union government - approval is required).

(c) Lease from a private owner

An investor may furthermore lease immovable property from a private owner. In order for the investor to be able to use the plot for a wholesale and/or retail business, the land must be of the type “freehold land” or “grant land”. If the land is of the type “farmland”, it may be used for a wholesale and/or retail business only after the Central



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Farmland Management Committee (for paddy land) or the government of the respective Region or State (for any farmland except paddy land) has approved the change of use (obtaining this approval involves a lengthy procedure).

The investor should ensure that the purported owner is (i) in possession of the original land ownership documents and (ii) recorded with the Land Record Department as the owner, and that the land is not subject to a dispute (e.g., from a failed dissolution of an estate, or with previous owners claiming to have lost the land through improper means). It should be noted in this context that it is often not possible to find out with certainty whether land serves as security for a loan as the most common type of mortgage does not require registration.

For bigger plots, the investor may wish to send in a surveyor to check the plot's measurements.

In practice, the parties will negotiate the lease agreement, but sign it only after the (foreign) investor has obtained an MIC permit or endorsement. In order to secure the land until then, the investor usually has to make a deposit with the land owner which the land owner will often not refund if the MIC application fails.

A distinctive feature exists in a joint venture: Often, the Myanmar joint venture partner would "contribute" land to the joint venture company instead of cash. Technically, however, this is a lease, as the local joint venture partner cannot transfer ownership to a foreign-invested joint venture company. Ownership of the land remains with the local partner. Instead of paying the rent in cash, the joint venture company issues shares to the local partner. This is currently the only way to realise a "contribution of land" to a foreign-invested joint venture company, but it causes problems if the joint venture partner becomes insolvent and, furthermore, raises tax issues and cash flow issues related to them.

2.2. Obtaining an MIC permit or endorsement

For foreign investors, obtaining an MIC permit or endorsement is essential if they wish to lease immovable property for the project in excess of one year as they otherwise cannot do so. Local investors (Myanmar citizens and 100% Myanmar-owned companies) may lease or own land without MIC approval.

Both local and foreign investors, however, have to apply for an MIC permit or endorsement if they wish to benefit from tax incentives (which consist, in essence, in the import of construction materials that are not available in the country free from customs duty and commercial tax).



The endorsement procedure was introduced in the Myanmar Investment Law (Pyidaungsu Hluttaw Law No. 40 dated 18 October 2016) as an easier and faster way to obtain MIC approval. In essence, it is available for investments with an amount of up to USD 100 million that do not require an environmental impact assessment or the use of state-owned land. Which investments may go through the endorsement procedure and which require a permit is specified in detail in Rules 3-7 Myanmar Investment Rules (Ministry of Planning and Finance Notification No. 35/2017 dated 30th March 2017; <https://tinyurl.com/y822j596>)

Endorsements for investments with an amount of up to USD 5 million are not issued by the Myanmar Investment Commission in Yangon, but by the Investment Commission of the respective Region or State.

The MIC has issued a guidebook that explains the procedures in detail (<https://tinyurl.com/y9h5tpmo>).

2.3. Environmental impact assessment or initial environmental examination

There are no official guidelines as to the size of a wholesale and/or retail outlet that requires the preparation of an environmental impact assessment or initial environmental examination report. Such reports are required for bigger projects (as stated, there are no official guidelines when a project is “bigger” with regard to a wholesale and/or retail outlet); they have to be prepared by a company approved by the Ministry of Natural Resources and Environmental Conservation. An example for an environmental impact assessment report for a fruits, vegetables and wholesale market can be found here: <https://tinyurl.com/y3fhrwv8>.

2.4. Obtaining an exporter/importer registration certificate

In order to import goods, a company must be registered with the Ministry of Commerce (Trade Department) as exporter/importer. This can usually be done within a few days; the registration fee is Ks. 203,000 (for a registration certificate with a validity of 5 years).

2.5. Revenue-stamping and registration of the lease agreement

The lease agreement has to be revenue-stamped. The stamp duty is a one-off payment in the amount of 2% of the annual rent if the lease is for a term in excess of three years; otherwise, it is a one-off payment of 0.5% of the annual rent. Stamping must be done prior to or on the date of signing.

If the term of the lease agreement is in excess of one year, it has to be registered with the Registration of Deeds Office (registration fee: 0.5% of the annual rent; a notarised Myanmar translation of the lease agreement is required if the agreement is in a foreign language).



The registration of the lease agreement requires the cooperation of the lessor.

The lease agreement does not have to be registered if the lessor is a public entity such as a ministry, irrespective of whether its term is in excess of one year or not.

2.6. Applying for a construction permit and constructing business facility (if not there yet)

If the business facility has not been constructed yet, the investor has to obtain a construction permit from the city or township development committee and build the facility. This requires the cooperation of the lessor.

For an idea of what the process might be like, investors may turn to the example - a local business owner applies for a permit to construct a warehouse within the YCDC area - provided in World Bank's "Doing Business" guide (<https://tinyurl.com/yddayxjr>). Construction permits are usually taken care of by the engineering bureau or building company retained for the construction.

After construction is completed, the investor has to apply for a "building completion certificate". This is usually also taken care of by the engineering bureau or building company.

2.7. Obtaining a municipal business permit and recommendation letter

One of the requirements for obtaining a wholesale and/or retail registration certificate from the Ministry of Commerce according to Notification 25/2018 is a recommendation letter from the development committee of the city or township in which the business is to be opened. This, in turn, usually requires a municipal business permit (exceptions apply in certain areas).

In the area of the Yangon City Development Committee ("YCDC") - with the exception of industrial zones -, the application for a municipal business permit ("**private market license**") requires in particular the submission of (i) land documents (grant, contract, lease); (ii) photos of the premises; (iii) 10 signatures from neighbours; (iv) no-objection letters from the fire department, electricity department and the health care officer; (v) business permit from "the relevant ministry" (if any); (v) other documents as requested.

A township development officer will come for a site visit. Approval for the business permit should be given within one week after the site visit. The applicant then has to pay the fee (which depends on the location, floor area and investment amount); the YCDC business permit should be issued shortly thereafter.



2.8. Obtaining a wholesale registration certificate and/or retail registration certificate from the Ministry of Commerce

The Ministry of commerce has published a detailed “standard operating procedure” for obtaining a wholesale registration certificate and/or retail registration certificate in its Newsletter 2/2018.

2.9. Other licenses

Depending on the goods to be sold, other licenses may be required, e.g.:

- Alcohol license (“FL12”) for the wholesale and retail vend of alcoholic beverages
- Recommendation letter from the Food and Drug Administration (FDA)
- Municipal food license
- No-objection letter from the municipal veterinary and meat production department
- Pharmacy license
- Chemicals and related substances business license

Furthermore, the operation of walkie-talkies (e.g., for security personnel guarding the premises) requires permission from the Ministry of Transport and Communications.

3. Process for foreign investors for whom the minimum capital and/or floor space requirements are too high or whose goods are not on the list of permitted goods

Foreign investors unable or unwilling to meet the minimum capital and/or floor space requirements or whose goods are not on the list of goods whose trade by foreign-invested companies is allowed (Ministry of Commerce Newsletter 3/2018) must cooperate with a local partner. This cooperation might take the following shape:

- The local partner sets up a 100% Myanmar-owned company that imports and trades the goods (“**Myanmar trading company**”).
- The foreign partner sets up a services company (either 100% foreign-owned or in a joint venture with the local partner - “**foreign services company**”) which concludes a service agreement with the Myanmar trading company (e.g., for management support, assistance with marketing, assistance with installation, assistance with maintenance and aftercare, training of staff, assistance with accounting, etc.) and charges a fee for these



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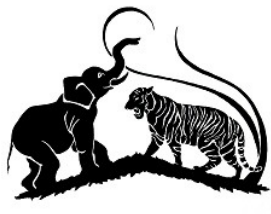
services. The foreign services company thus participates in the revenue from the sale of the goods by the Myanmar trading company in the shape of this service fee.

4. Process for local companies

Local companies are as such not required to obtain permission from the Ministry of Commerce to engage in wholesale and/or retail. They are only required to register with the Ministry if the initial investment amount is USD 700,000 or higher.

Local companies should undertake the following steps in order to open a wholesale and/or retail business:

- (j) **First step:** Purchase or lease suitable premises; revenue-stamp and register sales and purchase agreement or lease agreement
- (k) **Second step:** Obtain MIC permit or endorsement (if tax incentives - i.e., import of construction material and equipment free of customs duty and commercial tax during the construction period - are sought)
- (l) **Third step:** For very big projects, have a specialised company prepare an environmental impact assessment report or initial environmental examination
- (m) **Fourth step:** Obtain exporter/importer registration certificate from the Ministry of Commerce
- (n) **Fifth step:** Apply for construction permit and construct business facility (if not there yet)
- (o) **Sixth step:** Obtain municipal business permit from the city or township development committee
- (p) **Seventh step:** Only if the initial investment amount is USD 700,000 (or an equivalent amount in MMK) or more: Obtain a wholesale and/or retail registration certificate from the Ministry of Commerce
- (q) **Eighth step:** Depending on the goods to be sold, obtain other licenses



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