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Myanmar MoC Clarifies Registration Requirements for Retail and Wholesale Sector

In May 2018, Myanmar’s Ministry of Commerce (MoC) issued Directive 25/2018 (the Directive), allowing 100% foreign owned companies, as well as joint venture companies established between Myanmar citizens or companies and non-Myanmar citizens or companies, to conduct retail or wholesale businesses in Myanmar, subject to various minimum capital requirements and operational restrictions. Very broadly written, the Directive was quickly followed by a number of clarifications on both its scope and application to flesh out the legislative framework.

The first such clarification was Newsletter 3/2018 (the Newsletter), issued by the Department of Trade of the MoC on July 26, 2018, which clarified the scope by listing categories of products that fall under the Directive:

1. Consumer goods (including clothes, watches, and cosmetics)
2. Foodstuff (including agricultural products except restricted products, marine products, animal products, ready-made foods, various types of beverage, and domestically manufactured liquors)
3. Household goods (including ceramics, earthenware, and glassware)
4. Kitchen products
5. Medicine, medical devices and hospital equipment
6. Animal feed and veterinary medicines
7. Stationery
8. Furniture
9. Sport accessories
10. Communication products (including cameras and phones)
11. Electronics
12. Construction materials and equipment
13. Electrical goods
14. Chemicals for industrial manufacturing;
15. Seeds, inputs for agriculture, and materials for agricultural use;
16. Machinery for agriculture;
17. Various types of machinery and accessories;
18. Bicycles;
19. Motorcycles and accessories;
20. Spare parts for motor vehicles and heavy machinery;
21. Children’s toys;
22. Decorative materials for households (including flowers and plants)
23. Souvenirs and handmade products;
24. Fine art, musical instruments, and accessories (excluding antiques).

Categories of Companies

This was followed by clarification of the procedural requirements which form the MoC’s “standard operating procedure” for registering wholesale/retail businesses under the new regime. These identify four kinds of business that can operate under the Directive, and the approval which each category must secure:

- Category A:** 100% foreign-owned companies and joint venture companies that are incorporating in Myanmar for the first time and wish to register as a wholesaler or retailer.
- Category B:** Established foreign or joint venture companies already operating in Myanmar that wish to register as a wholesaler or retailer, but do not currently have the right to sell goods wholesale or retail.
- Category C:** Established foreign or joint venture companies currently permitted to conduct wholesale or retail business (including under an MIC endorsement or permit or through a previous notification* permitting foreigners to conduct wholesale or retail activities).
- Category D:** Domestic companies conducting wholesale or retail businesses covered by the Directive.

Category	Company registration	MIC endorsement/ permit	Recommendation from local authority	Retail/wholesale business registration
A	✓	✓	✓	✓
B		✓	✓	✓
C		✓	✓	✓*
D	✓			

*Companies in Category C include companies under MoC Notification 36/2017, which opened five trading businesses to foreign companies. Therefore, existing Category C companies need to apply for approval from the local authority with jurisdiction over the geographic area of the business, and for approval from the MoC for wholesale or retail registration with the below minimum initial investment requirements within five years from the date of submitting the application.

Registration Documents

To register as a retail/wholesale business, all companies in all categories must meet the final requirement of registration with the MoC using the following documents:

- ▶ Certificate of company registration
- ▶ Copy of the company’s Myanmar Investment Commission (MIC) endorsement (if the company is required to have an MIC permit)
- ▶ Recommendation letter from the relevant local authority
- ▶ Lists of groups of goods to be sold retail or wholesale
- ▶ Detailed business plan for the next five years prescribing the amount of initial capital investment, the location and number of outlets, and the area to be occupied in square meters
- ▶ Evidence of the initial investment capital deposit (to be submitted within 30 days of applying)

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Any existing company registered under the Directive that wishes to open a new branch or outlet must provide 90 days' notice to the MoC.

In addition, the Directive expressly entitles Myanmar companies to operate retail or wholesale businesses with any amount of initial investment capital. However, if they are already in operation, and their initial investment capital was equivalent to USD 700,000 or more, they must register with the MoC within 150 days of the issuance of the Directive.

Minimum Initial Investment Capital for Purchasing Goods

To qualify under the Directive, companies must meet certain minimum capital initial investment requirements, as detailed below.

	<ul style="list-style-type: none"> ■ 100% foreign ownership ■ Joint venture with less than 20% Myanmar direct ownership 	Joint venture with 20% or more Myanmar direct ownership
Retail	USD 3,000,000	USD 700,000
Wholesale	USD 5,000,000	USD 2,000,000

For the purposes of the Directive, initial investment capital is for purchasing goods and does not include the costs of leasing land and company operations, and the requirements apply to each premises from which the wholesaler/retailer plans to do business. Any other capital requirements applicable to the company are separate from the initial capital required for purchasing under the Directive. For example, if an investor would like to invest in one wholesale business operation and one retail business operation, each with 100% foreign ownership, the minimum initial capital requirement for purchasing products will be USD 8,000,000. The initial capital required for other aspects of the business, such as land and day-to-day operations, will be subject to separate requirements under general company law.

The standard operating procedure lessens the impact of this requirement a little by allowing companies in category A or B to make an initial capitalization of 50% of the total amount in the first year, 30% in the second year, and 20% in the third year of operation.

As companies in Category C already have approval for importing and trading their products under the Directive, these businesses are already considered to be wholesale and retail services under the Directive. Therefore, they are required to get approval from the local authorities for each of their business locations and apply for a wholesale/retail license under the Directive. Companies in Category C need to pay the initial capital investment for purchasing products indicated in the above table within five years from the date of applying for the wholesale or retail business registration.

Operational Restrictions

Companies established under the Directive must not operate door-to-door services or retail or wholesale premises, including minimarkets and convenience stores, with a floor area of less than 929 square meters under one roof, including small office space and storage. In addition, wholesaler must be deemed to have sufficient space to operate, and to be in an appropriate location if they engage in direct wholesale distribution.

In order to open any new outlets, the retailer must inform the MoC at least 90 days in advance and obtain MoC approval.

Registration and Extension Fees

A wholesale or retail registration certificate will be valid for five years from the date that the MOC approves it. The fee for registering or extending a registration is MMK 50,000 per registration, per location. Applications for extension should be submitted at least two months before the expiration date.

Penalties

Failure to register a business under the Directive, or to deposit the required initial investment amount, will result in two warnings, after which the company's export/import certificate will be suspended and its permission to import goods will be terminated.

Failure to re-register an expired certificate will be subject to a fine of MMK 20,000 if rectified within two months of expiry, or MMK 30,000 within four months of expiry. After four months, the registration certificate will be suspended and any permission to import goods will be cancelled.

The penalties for failure to comply with operational restrictions will be in accordance with applicable laws, bylaws, regulations, rules and directives issued by MoC and other authorities. It is not yet clear what these will entail, but they are expected to result in a suspension or revocation of the registration certificate and import license.

Conclusion

This major relaxation of business operational requirements in the Myanmar retail sector opens the door to large-scale foreign investment in this burgeoning economy and is of potentially enormous benefit to the country and to foreign investors. That said, the steady release of additional provisions governing that opportunity is a good example of the continued need to closely monitor ongoing legislative developments in Myanmar and to understand emerging issues as they arise. 🚀