

Luther.

Myanmar News

New Terms & Conditions
for Retail / Wholesale
Activities in Myanmar

May 2018

Legal and Tax Advice | www.luther-lawfirm.com
Corporate Services | www.luther-services.com

Table of Content

I. Introduction

Page 2

II. New Wholesale and Retail Regulations

Page 3

Annex Unofficial English Translation of Notification No. 25/2018

Page 5

Your Contacts

Page 9

Update on the Liberalization of Trade Restrictions in Myanmar

I. Introduction

Trading activities within the Republic of the Union of Myanmar are governed by numerous laws and regulations, as well as ministerial policies and practices. Since late 2001, most trading activities were prohibited for foreign investors in the Republic of the Union of Myanmar, both through limited approval of imports under the Export and Import Law 2012, as well as the enforcement of the unofficial ban on trade by the Ministry of Commerce.

In 2015, the Ministry of Commerce eventually started to change its policy, allowing selective relaxation of this general prohibition. In January 2015, the Ministry of Commerce announced a limited lift of its trade prohibition by permitting joint ventures operating car showrooms the import and sale of new automobiles. In November 2015, the Ministry of Commerce allowed the import and trade of specific products, namely fertilizers, seeds, pesticides and hospital equipment, followed by a similar notification for constructions materials in 2016. Since June 2017, chemical fertilizers, seeds, pesticides, hospital equipment and construction materials could be imported and sold by any foreign-owned company, including 100% foreign-owned companies. The import of farm equipment by joint ventures was permitted since November 2017.

Independently, the Management Committee of the Thilawa Special Economic Zone announced a broad exemption from the trade prohibition in May 2015, allowing certain wholesale trading activities by 100% foreign-owned companies incorporated in the newly established Thilawa Special Economic Zone.

The recent enactment of the Myanmar Investment Law 2016 was expected to further lift the ban on trade. On 10 April 2017, the Myanmar Investment Commission issued a list of restricted investment activities (Notification No. 15/2017), according to which retail and wholesale trading services shall be generally allowed. Such trading activities shall, however, require the approval of the Ministry of Commerce.

Following several consultation rounds and drafts, the Ministry of Commerce finally issued the new Terms & Conditions for Retail / Wholesale Trading on 9 May 2018.

II. New Wholesale and Retail Regulations

On 9 May 2018, the Ministry of Commerce issued Notification No. 25/2018, containing terms and conditions for Myanmar-owned companies, foreign-owned companies as well as joint-venture companies between Myanmar citizens and foreigners carrying out retail and wholesale trading activities in Myanmar.

Please find below an overview of the most relevant changes.

1. Definitions

According to this Notification, “retail” means the sale of goods to the public in small quantities for consumption, but not for re-sale. “Wholesale” is defined as sale of goods in large quantities to retailers for re-sale or to manufacturers for use as input in their production.

2. Eligibility

The new Notification shall apply to the following investors:

- 100% foreign-owned companies;
- Joint-venture companies between Myanmar citizens and foreigners; and
- 100% Myanmar-owned companies.

In accordance with the prescribed procedures, any such company shall be allowed to engage in retail/wholesale of domestically produced or imported goods (with the exception of restricted/prohibited goods) in the whole of Myanmar.

3. Requirements

Depending on the type of investment, the new Notification provides for different minimum capital requirements.

Comment Luther: *The reference to land rental fees seems to be a remnant from the Thilawa notification.*

Joint-Venture Companies

Joint-ventures between Myanmar citizens and foreign investors, in which the Myanmar shareholder(s) hold at least 20% of the shares are subject to the following minimum capital requirements:

- A joint-venture wholesale company with a minimum of 20% Myanmar-owned shareholding shall have a minimum capital of USD 2,000,000 (excluding land rental fees);
- A joint-venture retail company with a minimum of 20% Myanmar-owned shareholding shall have a minimum capital of USD 700,000 (excluding land rental fees).

Comment Luther: *A joint-venture company shall, however, not engage in retail distribution, including mini-markets and convenience stores, in premises of less than 929 square meters in floor area, as already provided in Notification 15/2017 of the Myanmar Investment Commission.*

Foreign-Owned Companies

For 100% foreign-owned companies and joint-venture companies with less than 20% Myanmar-owned shareholding, the new Notification provides for the following minimum capital requirements:

- A 100% foreign-owned or joint-venture company with less than 20% Myanmar-owned shareholding carrying out wholesale activities shall have a minimum capital of USD 5,000,000 (excluding land rental fees);
- A 100% foreign-owned or joint-venture company with less than 20% Myanmar-owned shareholding carrying out retail activities shall have a minimum capital of USD 3,000,000 (excluding land rental fees).

Comment Luther: *A foreign-owned company shall, however, not engage in retail distribution, including mini-markets and convenience stores, in premises of less than 929 square meters in floor area, as already provided in Notification 15/2017 of the Myanmar Investment Commission.*

100% Myanmar-Owned Companies

For 100% Myanmar-owned companies, neither minimum capital nor flooring-space requirements shall apply.

4. Registration

Companies eligible under the new Notification shall apply for a retail/wholesale license, submitting the following documents and information to the Ministry of Commerce:

- Certificate of Incorporation;
- Copy of MIC Permit or MIC Endorsement;
- Recommendation letter from the relevant City Development Committee or the relevant Township Development Committee in the Region/State concerned;
- List of goods to be distributed by retail/wholesale; and
- Detailed business plan (including initial investment amount, location of distribution, dimensions, etc.).

Comment Luther: *Foreign investors should however be reminded, that apart from the above registration as a Retail/Wholesale Business, existing service companies may be required to amend their business objectives to allow for trading activities. Further, additional registrations such as an Importer/Exporter Registration Certificate, a Business Representative registration or product-specific registrations with authorities such as the Food and Drug Administration of Myanmar may be required.*

A Myanmar citizen-owned company with an initial investment of USD 700,000 or more (or MMK equivalent) prior to the date of issuance of the new Notification shall – within 150 days after such date – register with the Ministry of Commerce and submit the following:

- Certificate of Incorporation;
- List of goods to be distributed by retail/wholesale;
- Detailed business plan (including initial investment amount, location of distribution, dimensions, etc.); and
- In case of having more than one business, the number of branches and detailed business plans of each business, including a list of goods to be distributed by retail/wholesale.

Comment Luther: *Myanmar citizen-owned companies with an initial investment capital of USD 700,000 or less (or equivalent in MMK) are exempted from registration.*

In general, retail/wholesale companies shall abide by the rules and regulations of the Nay Pyi Taw, Yangon or Mandalay City Development Committees as well as the Township Development Committee in Regions/States concerned as well as local authorities. They shall only open for business at prescribed locations during prescribed operating days and hours, complying with the prescribed dimensions and number of outlets.

Further, retail/wholesale companies shall comply with and perform their activities in accordance with the applicable laws, rules, procedures and regulations, ensuring that the goods distributed are safe and of specified quality, and providing after-sale services in accordance with warranties to avoid any damage to the environment.

Comment Luther: *Companies already registered as retail/wholesale enterprises and desirous of opening additional branches or extending them shall – within 90 days prior to such opening or extension – notify the Ministry of Commerce.*

5. Prohibitions

According to the new Notification, retail/wholesale company shall neither distribute retail/wholesale goods which are restricted or prohibited under any Myanmar law, rules or regulations nor engage in unfair competition in the sale of goods and services.

6. Non-Compliance

Any company violating the terms and conditions of the new Notification shall be subject to Ministry of Commerce sanctions as well as any applicable law, rules and regulations.

Annex

Unofficial English Translation of Notification No. 25/2018

Minister's Office
Notification No. 25/2018
9 May 2018

In exercising the powers conferred by section 13 (b) of the Export Import Law ("EIL"), the Ministry of Commerce ("MoC") of the Government of the Republic of the Union of Myanmar ("RUOM") hereby issues this Notification.

Allowing retail/wholesale within the country by foreign companies and joint-ventures between foreigners and Myanmar citizens

1. With the objectives of increased choices and reduced prices for consumers due to development of fair competition among retail/wholesale distributors; improvement in quality of goods and services, and in technology employed in sales and distribution; increased development of Small-and-Medium Enterprises ("SME") through greater market share for domestically produced goods, foreign companies, and joint-ventures between foreigner and Myanmar citizens are allowed to engage in retail/wholesale enterprises within the country with effect from the date of issuance of this Notification.
2. Any fully Myanmar citizen-owned company, fully foreigner-owned company or any joint-venture company engaged in retail/wholesale enterprise shall comply with and perform according to the attached terms and conditions ("T&C").
3. The T&C will be amended as needed.

(by)
Dr Than Myint
Union Minister
MoC

Letter No.: SaKa-11/2-18/2018(5)

Date: 9 May 2018

By order
signed
Toe Ag Myint
Permanent Secretary ("PS")

T&C for Retail/Wholesale

Justification

1. In the economic reforms of the Union of Myanmar ("UoM"), relaxation [of rules] in being provided in commercial sectors in order to increase employment opportunities and improvement in technology through foreign investment. In doing so, it has become necessary to allow foreigners to carry out sale and distribution services in the domestic market, not only to provide better prices and more choice in quality to consumers, but also to be in accordance with regional treaties. Hence, to bring about conditions favorable to the interest of the consuming public and also not detrimental to the domestic SMEs, retail/wholesale from among commercial activities related to distribution and sale, will be allowed to foreigners.

Aim

2. The aim of these T&C are as follows:
 - a. To afford better prices and more choice to consumers through increased competition among retail and wholesale distributors;
 - b. To improve quality and volume of goods and services, and technology through increased inputs to domestic goods and services of sale and distribution enterprises;
 - c. To further stimulate the development of SMEs due to capturing of more market share by domestic goods;
 - d. To enable operation under rules and regulations to prevent uncompetitive practices between distributors in exploitation of consumers;
 - e. To invite more foreign investments;
 - f. To increase employment opportunities for Myanmar citizens.

Definitions

3. Definitions are as follows:
 - a. **Retail** means the sale of goods to the public in small quantities for consumption and not for re-sale;
 - b. **Wholesale** means the sale of goods in large quantities to retailers for re-sale, or to manufacturers to use as input in production.

Right to sell

4. A fully citizen-owned company, fully foreigner-owned company, joint-venture between citizens and foreigners shall be allowed to carry out retail/wholesale as follows:
 - a. The company may engage in retail/wholesale in accordance with prescribed procedures of domestically produced or imported goods, other than restricted/prohibited goods;
 - b. The company may engage in retail/wholesale in accordance with prescribed procedures in any town within region/states.

Prescribed Conditions

5. A fully citizen-owned company, fully foreigner-owned company, joint-venture between citizens and foreigners, shall comply with the following in carrying out retail/wholesale activities within the country:
 - a. A foreign company, which on its own is desirous of engaging in:
 - (1) Wholesale - shall make an initial investment, excluding land rent, of USD 5 million or more in goods to be sold;
 - (2) Retail - shall make an initial investment, excluding land rent, of USD 3 million or more in goods to be sold.
 - b. A company which engages in retail/wholesale under a joint-venture system between citizen and foreigner:
 - (1) Where the equity ratio of citizen is 20 per cent or more:
 - (aa) In case of wholesale - shall make initial investment, excluding land rent, of USD 2 million or more in goods to be sold.
 - (bb) In case of retail - shall make initial investment, excluding land rent, of USD 700.000 or more in goods to be sold.

(2) Where the equity ratio of citizen is less than 20 per cent - it shall comply with conditions of section 5 sub-section (a) above.

6. A fully citizen-owned company may engage in retail/wholesale enterprise with the initial investment amount that it can afford.

Compliance

7. A fully citizen-owned company, fully foreigner-owned company, joint-venture between citizen and foreigner, shall comply with the following in carrying out retail/wholesale within the country:

a. Any of the above types of companies established subsequent to the issuance of these T&C, shall apply to the MoC with the following supporting documents in order to register a retail/wholesale enterprise:

(1) Certificate of incorporation;

(2) MIC's Endorsement (copy), MIC's Permit (copy) (those companies which are required to procure MIC's endorsement);

(3) Recommendation of the city development committee concerned or the township development committee in the region/state concerned;

(4) List of commodity classification of goods to be distributed retail/wholesale;

(5) Detailed business plan including initial investment amount, location of distribution, dimensions et cetera.

b. A fully citizen-owned companies, which had made initial investment of USD 700,000 or more (or MMK equivalent), prior to the date of issuance of these T&C, shall within 150 days after such date, register the retail/wholesale enterprise at the MoC, with the following supporting documents:

(1) Certificate of incorporation;

(2) List of commodity classification of goods being distributed retail/wholesale;

(3) Detailed business plan including working capital, location of distribution, dimensions et cetera;

(4) In case of having more than one business, the number of branches, and detailed business plan of each business including list of commodity classification of goods being distributed.

c. Retail/wholesale companies shall abide by rules and regulations of the NPT / Yangon / Mandalay City Development Committees, or the township development committee in region/state concerned, and local authorities, and open for business at prescribed locations, dimensions and number of outlets, at prescribed days and hours.

d. Retail/wholesale companies shall comply with and perform according to relevant laws, rules, procedures and regulations in order to ensure that the goods distributed are safe and of specified quality, and to provide after-sale service in accordance with warranties, and to avoid damage to the environment.

Prohibitions

8. Any company allowed to engage in retail/wholesale shall not distribute retail/wholesale goods restricted, prohibited under prevailing laws, notifications and regulations.

9. A fully foreigner-owned company or a joint-venture between citizen and foreigner, shall not engage in retail distribution, including mini-markets and convenience stores, in premises of less than 929 square meters in floor area.

10. A retail/wholesale company shall comply with and perform according to the laws, rules, regulations prescribed by the UoM, and shall refrain from unfair competition in the sale of goods and services.

Payment of stipulated taxes

11. A company allowed to engage in retail/wholesale shall, in the import and distribution of goods pay taxes in accordance with the prevailing laws, rules, regulations, procedures, orders and directives of departments concerned.

Oversight

12. The MoC, in cooperation with relevant departments, will oversee as needed compliance of the aforementioned T&C, and adherence to their business plan, and for improvement in domestic distribution and sale industry. Retail and wholesale operators shall cooperate and provide necessary data and evidence toward effective oversight.

Sanctions

13. Any retail/wholesale operator found to be in violation of these T&C shall have action taken against it under rules and regulations contained in laws, rules, orders and directives issued by the MoC.
14. In addition to laws and regulations issued by the MoC, a retail/wholesale operator shall also comply with and perform according to other prevailing laws and regulations related to sale, distribution and provision of services, and in case of failure to do so, will have action taken against it under applicable law, rules and regulations.

Miscellaneous

15. These T&Cs shall be applicable to all fully citizen-owned companies, fully foreigner-owned companies and citizen-foreigner joint-venture companies engaged in retail/wholesale distribution.
16. However, fully citizen-owned companies engaged in retail/wholesale with initial investment capital of USD 700,000 or less (or equivalent in MMK), are exempted from requirement for registration under Section 7 sub-section (a) of these T&C.
17. Companies registered as retail/wholesale enterprises, which are desirous of opening additional branches or extending them, shall within 90-days prior to such opening or extension, shall notify the MoC, and such additional/extended branches shall also comply with the prescribed T&Cs.
18. These T&Cs for retail/wholesale distribution will be amended in accordance with the needs of the Union.

Your Contacts



Alexander Bohusch

Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
alex.bohusch@luther-lawfirm.com



Fabian Lorenz, M.A.

Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
fabian.lorenz@luther-lawfirm.com



Nicole Schwiegk

Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
nicole.schwiegk@luther-lawfirm.com



Fanny Tatin

Avocat/Attorney-at-law (France)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
fanny.tatin@luther-lawfirm.com

Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22,
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,
contact@luther-lawfirm.com

Editor: Alexander Bohusch, Rechtsanwalt/Attorney-at-law (Germany),
Luther Law Firm Limited, Luther Corporate Services Limited, Uniteam Marine Of-
fice Building, Level 8, Unit #1, 84 Pan Hlaing Street, Sanchaung Township
11111 Yangon, Myanmar, Phone +95 1 500 021, Fax +95 1 502 852,
HP (MM): +95 9 425 0136 00, HP (SG): +65 9 829 1829, alexander.bohusch@
luther-lawfirm.com

Copyright: These texts are protected by copyright. You may make use of the infor-
mation contained herein with our written consent, if you do so accurately and cite
us as the source. Please contact the editors in this regard
contact@luther-lawfirm.com

Disclaimer

Although every effort has been made to offer current and correct information, this
publication has been prepared to provide information on recent regulatory and le-
gal developments in Myanmar only. It is not exhaustive and thus does not cover
all topics with which it deals. It will not be updated and cannot substitute individ-
ual legal and/or tax advice. This publication is distributed with the understanding
that Luther, the editors and authors cannot be held responsible for the results of
any actions taken on the basis of information contained herein or omitted, nor for
any errors or omissions in this regard.

Luther Rechtsanwaltsgesellschaft mbH advises in all areas of business law. Our clients include medium-sized companies and large corporations, as well as the public sector.

Berlin, Brussels, Cologne, Dusseldorf, Essen, Frankfurt a. M., Hamburg, Hanover, Leipzig,
London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon

Luther Corporate Services: Delhi-Gurugram, Kuala Lumpur, Shanghai, Singapore, Yangon

Your local contacts can be found on our websites www.luther-lawfirm.com and www.luther-services.com.



Hits the mark. Luther.

