



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



**OBTAINING RETAIL AND WHOLESALE PERMITS IN MYANMAR**

**21 June 2018**

# **BRIEF HISTORY OF MARKET ACCESS RESTRICTION...**



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## BURMESE WAY TO SOCIALISM: 1962-1988

- **1963:** Enterprises Nationalisation Law authorises government to confiscate any enterprise
- Subsequently, wholesale shops, broker houses, companies, department stores and warehouses are nationalised
- Retail distribution of imported and domestic goods is monopolised by state-owned People's Stores Corporation
- Living standard plummets; black market economy thrives



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# MARKET-ORIENTED ECONOMY: 1988-2011

- **1988:** Official opening of private sector, foreign investments allowed, but large part of the economy still state monopolies
- **1997:** Establishment of the Trade Council as super overseer that develops trade policy, approves export/import licenses and approves foreign investment



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# MARKET-ORIENTED ECONOMY: 1988-2011

- **2002:** Trade Council decides that no new foreign-invested trading (wholesale, retail and international trade) companies will be allowed and the company registration of existing trading companies will not be renewed (unless trading activities are removed from the business scope)



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**... AND LIBERALISATION**



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# ECONOMIC LIBERALISATION: 2011-PRESENT

- **2011:** Abolishment of the Trade Council; export/import licenses approved by Ministry of Commerce; foreign investment approved by MIC
- **2012:** New Foreign Investment Law; **2013:** Citizens Investment Law (but no change in market access restrictions for foreign-invested trading companies)



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# ECONOMIC LIBERALISATION: 2011-PRESENT

- **2015:** Ministry of Commerce allows joint ventures to import and sell brand-new cars (Notification 20/2015; now replaced by Notification 16/2017) and fertilisers, seeds, pesticides and hospital equipment (Notification 96/2015)
- **2015:** Wholesale trade allowed in the Thilawa SEZ within limits and subject to substantial investment amounts (Thilawa SEZ Management Committee Instruction 2/2015)
- **2016:** Ministry of Commerce allows joint ventures to import and sell construction materials (Notification 56/2016)



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# ECONOMIC LIBERALISATION: 2011-PRESENT

- **2016:** New Myanmar Investment Law (but no immediate change in market access restrictions for foreign-invested trading companies)
- **2017:** MIC Notification 15/2017
  - prohibits foreign investment in convenience stores and minimarkets with less than 929 m<sup>2</sup> floor space;
  - allows foreign-invested wholesale and retail business with Ministry of Commerce approval;
  - allows the import and sale of petroleum products with Ministry of Electricity and Energy approval



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# ECONOMIC LIBERALISATION: 2011-PRESENT

- **2017:** Ministry of Commerce allows joint ventures to import and sell construction machines (Notification 17/2017)
- **2017:** Ministry of Commerce allows 100% foreign-owned companies to import and sell construction materials, fertilisers, seeds, pesticides and hospital equipment (Notification 36/2017)
- **2017:** Ministry of Commerce allows joint ventures to import and sell agricultural equipment (Notification 55/2017)



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# ECONOMIC LIBERALISATION: 2011-PRESENT

- **2018:** Ministry of Commerce allows 100% foreign-owned companies to engage in retail and wholesale subject to minimum capital requirements (Notification 25/2018)



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**MINISTRY OF COMMERCE NOTIFICATION  
25/2018**



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# MINIMUM INITIAL INVESTMENT AMOUNT

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

- **Minimum initial investment amount exclusive of the rent**
- **Initial investment amount  $\neq$  paid-up capital; may be injected (i) over time and (ii) in kind (as goods to be sold), but Ministry of Commerce has not specified details yet**
- **100% Myanmar-owned companies exempt from registration requirement if initial investment amount  $<$  USD 0.7 million**



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# MINIMUM INITIAL INVESTMENT AMOUNT

- Minimum initial investment amounts have to be combined if both a wholesale and a retail permit are sought (e.g., USD 5 million + 3 million = 8 million)
- Minimum initial investment amount per project, not per outlet



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# MINIMUM FLOOR SPACE FOR RETAIL PERMIT

- Paragraph 9: “100% foreign-owned companies and joint venture companies shall not operate a minimarket or convenience store with a floor area of less than 929 m<sup>2</sup>.”
- Sale through other shops (e.g., wine shop, office equipment shop) or from a warehouse with smaller retail space? → Myanmar Times article on 1 June 2018 suggests that this is not allowed, but this has not been decided yet
- Online sale? Mail order sale? → Not regulated



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# PROCEDURE FOR OBTAINING A WS OR RT PERMIT

- **First step:** Secure land or premises
- **Second step:** If you are a foreign investor and want (i) to lease the premises long-term or (ii) erect a building on the land: Obtain an MIC endorsement or permit
- **Third step:** Incorporate company
- **Fourth step:** Any business permits of other relevant ministries required?



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# PROCEDURE FOR OBTAINING A WS OR RT PERMIT

- **Fifth step:** Obtain business permit and recommendation letter from the city or township development committee
- **Sixth step:** File application with Ministry of Commerce in Nay Pyi Taw
- **Seventh step:** Collect permit in Nay Pyi Taw (hopefully)
- **Eighth step:** Register as exporter/importer with the Ministry of Commerce (Department of Trade) in Yangon
- **Ninth step:** Get other approvals (e.g., FDA approval)



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# MUNICIPAL BUSINESS PERMIT

- **Example: Yangon**
- **In order to obtain a recommendation letter from YCDC, the investor has to obtain a YCDC business permit first**
- **The procedure for obtaining a YCDC business permit is well-established and has been in place since long before Ministry of Commerce Notification 25/2018**



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# MUNICIPAL BUSINESS PERMIT

- It involves in particular the submission of (i) land documents (grant, contract, lease); photos of the premises; 10 signatures from neighbours; no-objection letters from the fire department, electricity department and health care officer; business permit from “the relevant ministry”; other documents as requested
- A township development officer will come for a site visit
- Approval of the business permit should be given within one week after the site visit → payment of fees → issuance of business permit



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# APPLICATION WITH MOC IN NAY PYI TAW

- The application file has to contain:
  - Cover letter
  - Corporate documents
  - MIC endorsement or permit (if any)
  - Municipal recommendation letter(s)
  - Number of outlets
  - List of groups of goods to be distributed at each outlet
  - Detailed business plan specifying the initial investment amount and the location and floor space of each outlet



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# APPLICATION WITH MOC IN NAY PYI TAW

- **Big question: What to put in the “list of groups of goods” and “detailed business plan”?**
  - **Currently, no specific guidance from the Ministry of Commerce**
  - **Ministry is waiting for first applications to use as templates**
  - **So, submit a proposal that is simply beautiful: Best is probably to use business plan templates designed for obtaining bank loans (as they are designed to move a loan officer’s heart of stone) and add language to reflect Notification 25/2018’s objectives**



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# PERMIT FOR AN EXISTING BUSINESS

- 100% Myanmar-owned wholesale or retail businesses with an investment amount of USD 700,000 and above have 150 days to apply for a permit (paragraph 7(b))
- How relevant in practice?
  - How to calculate the investment amount?
  - Not clear what penalties would apply (as Notification 25/2018 is based on the Export/Import Law which does not really provide for penalties for “engaging in wholesale or retail without a permit”)



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# RELATIONSHIP WITH OTHER REGULATIONS

- **Example:** An investor imports and sells petroleum products with permission from the Ministry of Electricity and Energy; or an investor imports and sells construction materials according to Ministry of Commerce Notification No. 36/2017
  - The investors do not need a wholesale or retail permit according to Notification 25/2018
- Investors with a wholesale or retail permit according to Notification 25/2018 do not have to register as “business representative” according to Ministry of Trade Order 2/1989



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# MISCELLANEOUS

- License fees?
- License term?
- New Companies Law (“harmless” 35% threshold)?



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# WHOLESALE AND RETAIL ACCORDING TO OTHER RULES



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# MOC NOTIFICATION 36/2017

- Import, export and sale of construction materials, fertilisers, seeds, pesticides and hospital equipment
- **Easy!** Either (i) set up a new company with the business scope “import, export and trade of [e.g.] construction materials” or amend the business scope of an existing company
- Then apply for exporter/importer registration with the Ministry of Commerce (Trade Department) in Yangon



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## PETROLEUM PRODUCTS (E.G., LPG)

- The “import, export, transport, storage, distribution and sale” of LPG requires approval from the Ministry of Electricity and Energy
  - **License A** (wholesale): Import, storage and distribution with own terminals and jetties
  - **License B** (wholesale): Import, storage and distribution with own storage tanks and cylinder warehouses
  - **License C** (wholesale): Storage and distribution of LPG to filling stations
  - **License D and E** (retail): Storage and sale to end-customers



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## **PETROLEUM PRODUCTS (E.G., LPG)**

- All five licenses are available to foreign investors –
- Well, admittedly, this is not entirely certain. The MoEE officer whom we called yesterday, however, said: “There is no explicit bar on foreign investment, and in this time of promoting foreign investment, we treat each case without explicit prohibition as ‘allowed’. All five licenses should therefore be available, but it may be more difficult getting the ‘smaller’ licenses than the ‘bigger’ ones.”



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## PETROLEUM PRODUCTS (E.G., LPG)

- **We would say: Try!**
- **Obstacle, however: It is not possible to obtain a license first and then search for, and rent, suitable premises. The premises must be ready at the time of the license application as a check of the land documents, check for fire safety by the fire department and environmental check are important aspects in the license application.**



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# OTHERS

- **Permission on case-by-case basis**
- **Joint venture to import and sell brand-new cars (MoC Joint Notification 16/2017) or construction machines (MoC Notification 17/2017): Apply with MoC in Nay Pyi Taw**
- **Wholesale in Thilawa: Thilawa SEZ Management Committee Instruction 2/2015**
- **Franchise structure**
- **Management service agreement with local agent**



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# CONTACT

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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