DFDL

BANKING AND FINANCE UPDATE COMPENDIUM

2022 - 2023

CONTENTS

INTRODUCTION

In 2022, the Central Bank of Myanmar ("**CBM**") issued a series of laws and regulations to bolster the country's foreign exchange reserves in response to the political situation and the COVID-19 pandemic. DFDL had compiled a compendium that tracked these developments up until April 2022.

In this document, DFDL provides an overview of the legal developments in foreign exchange and related matters from April 2022 to the first two quarters of 2023. To provide convenience to our readers, we have arranged the information chronologically and categorized it according to specific subject matters.

PART I: REGULATIONS ON INWARD AND OUTWARD REMITTANCES OF FOREIGN EXCHANGE

INWARD REMITTANCE, CONVERSION OF FOREIGN CURRENCY FUNDS

1. Under Section 12 of the Foreign Exchange Management Law, 2012 ("**FEML**"), Myanmar residents are required to remit to Myanmar by way of bank account transfer via authorized dealer banks in Myanmar ("**AD Banks**"), the foreign currency income that they earn overseas. To our knowledge, the CBM had not enacted any specific legislation addressing this aspect until April 2022.

2. The CBM issued a notification on 3 April 2022, which stated as follows:

    (a) Myanmar residents who receive income in foreign currency from overseas are required to remit the funds to a foreign currency account opened with an AD Bank in Myanmar.

    (b) The funds so received into the foreign currency bank account of the resident in Myanmar had to be converted to Myanmar Kyat ("**MMK**") within one day from the date of receipt and deposited into an MMK account by the resident.

    (c) CBM would issue a list of entities that would be exempted from this conversion requirement.

    (d) Any offshore transfer of foreign currency had to be done via AD Banks with the permission of the Foreign Exchange Supervisory Committee ("**FESC**")[1] and

    (e) Any foreign currency entering Myanmar before 3 April 2022 will also be subject to the conversion requirement mentioned in the notification.

("**Foreign Currency Conversion Notification**")

3. On the same date as the above notification, the CBM published a directive that set the foreign exchange conversion rate at MMK 1,850 per USD 1.

4. Subsequently, on 5 April 2022, the CBM published a directive requiring AD Banks to comply with the procedure for conversion of foreign currency income based on the different types of income (i.e., export/import earnings, investment) within one working day. It further stated that other than foreign currencies that were exempted from the conversion requirement with the approval of the FESC, on the date the foreign currency bank account of the resident got credited with the foreign currency amount, the relevant AD Bank was required to purchase and convert the foreign currency to MMK at

[1] The Foreign Exchange Supervisory Committee was formed by the State Administration Council by Order No. 8/2022 dated 4 April 2022 to promote the stability of foreign exchange rates and effective use of foreign currencies as a measure to support the Myanmar economy. It is a 6-member committee that was tasked with the approval of use of foreign currency for import of tools, raw materials, production of goods, equipment and machinery, fuel, edible oil, repayment of offshore loans, service payments, dividend repatriation and so on, as listed in the abovementioned order.

the specified exchange rate and credit the MMK account of the person with the converted amount.

FOREIGN CURRENCY CONVERSION EXEMPTION AND RELATED NOTIFICATIONS

1. Pursuant to the Foreign Currency Conversion Notification, the CBM issued a series of notifications and directives that listed the entities that would be exempted from the foreign currency conversion requirement under the above notification.

2. On 5 April 2022, the CBM published a directive which exempted the Union Government and the Union Ministries from adhering to the foreign currency income conversion requirement under the Foreign Currency Conversion Notification.

3. On 20 April 2022, the CBM issued a letter listing the types of individuals, organizations, and businesses to whom the foreign currency income conversion requirement under the Foreign Currency Conversion Notification did not apply:

   (a) foreign direct investment activities carried out with the permission of the Myanmar Investment Commission;
   (b) investment operating in special economic zones;
   (c) foreign diplomats and their family members at embassies established in Myanmar from countries with diplomatic relations with Myanmar;
   (d) foreign staff members of the diplomatic corporations with the same rank as the diplomats serving at these embassies;
   (e) the staff of the United Nations and its agencies established in Myanmar and Myanmar nationals holding a UN staff (laissez-passer) passport;
   (f) foreign staff at development agencies assisting Myanmar; and
   (g) diplomatic foreign staff of international organizations (e.g., International Committee of the Red Cross, International Labour Organization, etc.), INGOs, and development agencies (e.g., TICA, JICA).

4. The letter further stated that the AD Banks must follow Know Your Customer and Customer Due Diligence procedures when conducting foreign exchange transactions to ensure that the individual / company / organization qualified for the exemption. It also required the AD Banks to report all relevant documentation of such transactions to the CBM.

5. On 26 April 2022, the CBM issued a directive to clarify that the Foreign Currency Conversion Notification did not apply to exporters and importers trading under the China-Myanmar border trade and Thailand-Myanmar border trade programs.[2] In this respect, it stated that the AD Banks were required to comply with the following:

   (a) **Treatment of payments for imports:** the AD Banks were required to process the payments in foreign currency without the approval of the FESC.
   (b) **Treatment of the export income received by the exporters:** the AD Banks were required to deposit such income in the exporter's bank accounts in Myanmar per the provisions of the Foreign Exchange Management Law and Regulations.
   (c) **Usage of export income:** The exporters were permitted to use the export income within one month of receipt or sell such export income to

[2] In March 2022, the CBM had issued a notification permitting Thai Baht to MMK payment for trade along the Thailand-Myanmar border. This notification allowed importers and exporters to open Thai Baht accounts at designated banks to pay for cross-border trade between Myanmar and Thailand. Initially, CBM licensed branches and subsidiaries of Thai banks in Myanmar would be the designated banks for this purpose.

the AD Bank. The remaining income had to be sold to the AD Banks.

(d) **Reporting of border trade:** All foreign currency transactions conducted under the China-Myanmar border trade and Thailand-Myanmar border trade program had to be reported by the AD Banks to the Foreign Exchange Management Department of the CBM using the Border Trade Module of the Electronic Reporting System.

6. On 2 June 2022, the Ministry of Transport and Communications issued a letter to implement the letter dated 1 June 2022. The letter stated that the FESC allowed logistics service companies to retain specific amounts of foreign currency in their foreign currency bank accounts in Myanmar, as noted therein (and reflected in the table below). Any foreign currency exceeding such amounts shall be converted to MMK.

Business Sector (Regulating Association)	Foreign Currency Equivalent Amount
Freight forwarding (Myanmar International Freight Forwarder Association)	USD 300,000 per month
Mercantile Marine Development (Myanmar Mercantile Marine Development Association)	USD 2,000,000 per month
International air freight forwarding and ground services	USD 100,000 per month

7. The CBM issued a letter on 16 June 2022 that set out the minutes of the meeting between the CBM and the representatives of the AD Banks regarding the introduction of certain relaxations to the restrictions imposed on foreign currency-related matters under the Foreign Currency Conversion Notification. The letter stated, among other things, that companies registered with the Directorate of Investment and Company Administration having at least 10% foreign shareholding were exempted from the Foreign Currency Conversion Notification.

8. Further, on 29 June 2022, the CBM issued a letter exempting the following entities from the requirements under the Foreign Currency Conversion Notification:

(a) Foreign currency account opened at Representative Office of Woori Bank;
(b) Foreign currency account of Special Economic Zone Management Committees and their subordinated companies, such as Thilawa SEZ Management Committee Company Limited, Kyaukphyu Special Economic Zone Project Development Company Limited, Kyaukphyu Special Economic Zone Deep Sea Port Company Limited, and Dawei SEZ Management Committee Company Limited;
(c) Export-Import Bank of India;
(d) China National Oil Corporation (Myanmar Branch); and
(e) Panjab National Bank Yangon Representative Office.

9. On 6 July 2022, the CBM issued a letter instructing the companies and organizations exempted from the Foreign Currency Conversion Notification to obtain the prior approval of the FESC to transfer foreign currency offshore or purchase foreign currency (on account of insufficient foreign currency in their foreign currency bank account in Myanmar).

10. On 13 July 2022, the CBM issued an order revoking the foreign currency conversion exemption for companies with 10% foreign shareholding, thereby repealing the relevant section of the letter issued on 16 June 2022.

11. On 15 July 2022, the CBM instructed AD Banks to convert the foreign currency held by the local companies (with up to 35% foreign shareholding) listed in the letter to MMK.

12. On 15 August 2022, the CBM issued a letter to AD Banks regarding the course of action they must take for the foreign exchange earnings of exempted companies, organizations, and individuals whose foreign

currency accounts are opened. The letter stated that:

(a) AD Banks shall allow usage of 100% overseas earnings for personal purposes;
(b) companies that have bought foreign currency from companies or organizations exempted from the requirements under the Foreign Currency Conversion Notification can use the foreign currency for their purposes or sell it to AD Bank only within 30 days from the date of purchase;
(c) exempted companies and other companies that have purchased foreign currency from the former may transfer the foreign currency earnings offshore without the approval of the FESC.

13. However, repealing the above letter, the CBM, on 16 August 2022, issued a letter instructing the AD Banks to allow the entities and individuals exempted from the requirements under the Foreign Currency Conversion Notification to:

(a) Use the foreign currency for their purposes, or
(b) Sell to other individuals or AD Banks without obtaining approval from the FESC;

Further, the letter permitted the entities and individuals who have purchased foreign currency from exempted entities to use such foreign exchange within 30 days for their purposes or sell it to the AD Banks. However, it stated that any cross-border transfer of foreign currency would need to be approved by the FESC.

14. On 30 August 2022, the CBM issued a notification which permitted Myanmar citizens who receive wages or salaries in a foreign currency overseas (and remit such salaries to Myanmar via AD Banks) to use for their purpose or sell such foreign currency to third parties.

The notification stated that such citizens were permitted to use the foreign currency for the purposes above within 21 days from the date of remittance or otherwise sell the foreign currency to the AD Bank. Further, it stated that the parties who purchased such foreign currency from the non-resident person may not resell it except to an AD Bank or use it for their requirements within 21 days from the initial date of inward remittance.

15. On 30 December 2022, the CBM issued a letter pursuant to a meeting of the FESC. The letter stated that the FESC had decided that companies with more than 35% foreign shareholding do not need to convert their foreign currency. The letter also stated that such companies:

(a) may use the foreign currency for internal use and sell it to the AD Banks;
(b) must seek prior approval from the FESC to remit foreign currency out of Myanmar for non-trading purposes.

TRADE EARNINGS AND EXPENDITURES

1. Under the Foreign Exchange Management Rules, 2014 ("**FEMR**"), AD Banks must scrutinize whether exporters receive the export proceeds within six months from the date of shipment of goods. The FEMR stipulates that upon receipt of the foreign currency export proceeds, the exporters must transfer such proceeds to their account opened with an AD Bank. The FEMR authorizes the AD Banks to convert the foreign currency receipts into MMK and credit the MMK account of the exporter.

2. On 3 September 2021, the CBM published a notification that required the exporters to sell the unused, foreign currency export proceeds received by them to the relevant AD Bank within six months of receiving such proceeds.

3. Subsequently, on 3 October 2021, the CBM published another notification which stated that exporters who had bank accounts at AD Banks and received income in foreign currency from the export of products may:

   (a) use the proceeds for their purposes and sell within 30 days of the transfer to their bank accounts, or
   (b) sell the remaining amounts to AD Banks at market exchange rate within 30 days from the date of transfer.

4. On 10 November 2021, the CBM published a notification that amended Section 35 of the FEMR. The amendment required AD Banks to inspect whether exporters received export earnings within three months from the date of shipment of goods according to the evidence of actual exports. Previously, AD Banks were required to verify whether exporters received the foreign currency earnings within six months of their goods' shipment date.

5. In April 2022, pursuant to the Foreign Currency Conversion Notification, the AD Banks of exporters were required to convert the entire foreign currency export proceeds received by the exporters to MMK.

6. On 5 August 2022, the CBM issued a notification which allowed exporters to convert only 65% of their export earnings received by them in their foreign currency bank accounts in Myanmar. The CBM issued another letter on 10 August 2022 to implement the above notification.

7. On 16 August 2022, the CBM issued a letter (superseding the letter it had issued on 10 August 2022) which stated that AD banks are required to convert 65% of the export earnings of exporters into Kyat within one business day of receipt of the proceeds in Myanmar. It further stated as follows:

   (a) The exporters are permitted to use the remaining 35% of the proceeds for their purposes.
   (b) Recipients of the foreign currency may use it for their purposes or convert it to MMK at an AD Bank.
   (c) All transactions involving such foreign currency by the exporter or third-party purchasers of the foreign currency must be completed within 30 days of receipt of the foreign currency in Myanmar, after which the balance will be converted to MMK by the AD banks at which they are held.
   (d) Any cross-border payments made using foreign currency by an exporter or third parties to whom it transferred foreign currency must be pre-approved by the FESC.

8. On 25 August 2022, CBM issued a letter regarding the submission of the list of foreign currency sold to importers of fuel and edible oil from among the foreign currency purchased by the AD Banks from the 35% export earnings retained by exporters or from exempted companies, organizations, and individuals.

9. On 26 August 2022, the CBM published a letter instructing the AD Banks to permit the exporters to use 35% of the export earnings (retained in foreign currency in their foreign currency bank account) for their use or sell them to third parties (including AD Banks) and to process trade-related payments abroad without the approval of the FESC.

10. On 30 September 2022, CBM issued a letter that allowed fuel importers to repay portions of existing and future trade financing agreements in Chinese yuan.

OUTWARD REMITTANCES, INCLUDING DEBT SERVICING

1. The FEML and FEMR govern the foreign exchange regime in Myanmar. The FEML distinguishes between current account transactions, such as trade, service, interest, or profit-related payment transactions, and capital account transactions, encompassing transactions other than those related to the current account.

Notably, the FEML does not impose any restrictions on the inward or outward remittance of payments for current account transactions. Regarding capital account transactions, the FEML mandates that Myanmar residents obtain prior approval from the CBM. For instance, the FEML specifies that prior approval from the CBM is necessary for Myanmar residents to receive loans from overseas.

2. Note that the CBM had, via the notification on 3 April 2022, required all residents to obtain the prior approval of the FESC to remit foreign currencies offshore. The CBM had, after that, on 6 July 2022, iterated that companies exempted from the Foreign Currency Conversion Notification are required to obtain the prior approval of the FESC to transfer any amount of foreign currency offshore. With these regulations, the CBM blurred the distinction between the approval requirements for current and capital account transaction payments.

3. On 13 July 2022, the CBM issued a letter instructing AD Banks to inform their clients to negotiate with offshore lenders to temporarily suspend repayments of principal and interest payments for offshore loans.

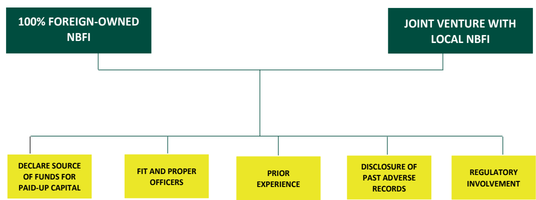
PART II: OTHER BANKING AND FINANCE RELATED NOTIFICATIONS

ESTABLISHMENT AND OPERATIONS OF NON-BANKING FINANCIAL INSTITUTIONS

1. The Financial Institutions Law of 2016 ("**FIL**") recognizes that non-bank financial services require a license from the CBM. The FIL lists the types of financial services that a Non-bank Financial Institution ("**NBFI**") can provide in Myanmar. Foreign financial institutions can establish representative offices after obtaining a license from the CBM. However, the law doesn't mention any other business structure for foreign financial institutions. In the past, the CBM only issued licenses to businesses 100% owned by Myanmar entities.

2. In January 2021, the CBM issued a directive regulating the establishment, operations and business of non-bank financial institutions ("**NBFI**") engaged in the business of finance company, leasing or factoring business ("**2021 Directive**"). The 2021 Directive outlined the process for registration and the criteria for obtaining a registration certificate. It also specified requirements for directors, senior management and substantial shareholders of the NBFIs, as well as conditions for seeking mandatory approval from the CBM.

3. On 13 July 2022, the CBM issued a Directive regulating the establishment of a 100% foreign-owned NBFI and allowing equity investment/joint venture with a local NBFI ("**2022 Directive**"). This 2022 Directive explained the process and documents required for procuring a registration certificate or permit. Some of the standard requirements and criteria for a 100% foreign-owned NBFI and a joint venture are noted below:



The 2022 Directive stated that the CBM would review the registration applications based on the criteria listed in the directive and accept or decline the application within six months. Like the 2021 Directive, the 2022 Directive prohibited NBFIs from taking deposits.

4. Additionally, the 2022 Directive required the NBFIs to seek the approval of the CBM before the effective date for the following matters:

   (a) Transfer or sale of shares with 10% voting rights and above;
   (b) Sale, dispose, or transfer of the entire or part of the business;

(c) Raising capital funds, a program for raising capital funds, a change of the shareholding ratio of shareholders;
(d) Changes of shareholding that will cease the foreign company status or that will transform into a local company status; and
(e) Any matter assumed to be necessary by the CBM.

5. In 2022, another directive was issued by the CBM, which set out the eligibility criteria for appointing management-level staff of NBFIs. This directive applied to all NBFIs, substantial shareholders and beneficial owners, directors and officers ("Subjects") of an NBFI. The directive stated that the Board of Directors are responsible for ensuring that all Subjects of the NBFI are fit and proper. The directive stated that the eligibility criteria for the appointment of management-level staff at an NBFI were based generally on the following three features:

(a) Honesty, integrity and reputation;
(b) Competence and capability; and
(c) Financial soundness.

Below is a list of a few key points in this directive:

(a) NBFIs were required to seek written approval from the CBM to appoint Directors and Chief Executive Officers 30 days before the appointment by submitting documents listed in the directive. Failure to secure such approval could lead to removal from office.
(b) The CBM was authorized to conduct additional background checks on Directors and Chief Executive Officers of the NBFI. The exact timing of these checks was not specified.
(c) NBFIs were obligated to conduct independent assessments to determine the eligibility and propriety of individuals through reliable sources.
(d) The directive also provided guidelines regarding the educational qualifications, training, and experience required for the Subjects.

6. In November 2022, the CBM issued a directive stipulating the fee to be paid by NBFIs for relocation and closure of their branch offices in the same or different townships. The directive further stated that the NBFIs were required to deposit a fee of MMK 200,000 to the CBM for this purpose. The relevant NBFI was required to obtain the approval of CBM for the relocation and closure of branch offices or head offices by following the guidelines stipulated in the 2021 Directive. Additionally, they were required to provide evidence of payment of the relocation/closure fee paid to the CBM.

7. In January 2023, the CBM issued a directive instructing NBFIs to adhere to a directive published in 2021 by the CBM concerning establishing branch offices, relocating business premises, and closure of NBFIs ("**2023 Directive**"). It states that all NBFIs must obtain prior approval from the CBM and strictly adhere to its directives, failing which the relevant NBFIs would face the sanctions listed in the 2023 Directive.

FEES FOR RELOCATION OF BANKS AND NON-BANK FINANCIAL INSTITUTIONS

Fees for Relocation of Banks

1. The CBM issued a directive on 26 January 2017 which prescribed the fee for establishing a bank branch (both foreign and domestic) at MMK 500,000. It also stated the applicable license fee for domestic and foreign banks. In 2018, the CBM issued a directive which listed the documents and information that banks must provide (the "**2018 Directive**") regarding the number of branches it intended to open, security measures in branch locations, evidence of having conducted a feasibility study and so on.

2. Further, on 26 February 2021, the CBM published a directive that changed the currency of payment of the license fee to

MMK but retained the fee payable for establishing a bank branch at MMK 500,000.

3. On 25 November 2022, the CBM issued a directive whereby it stated that on and from the said date, all banks in Myanmar are required to deposit a sum of MMK 500,000 with the CBM and submit evidence of such deposit along with the documents listed in the 2018 Directive as part of its application seeking approval for the relocation of its head office and/or any of its branches, either in the same township where they operated or elsewhere.

<u>Fees for Relocation of Non-Banking Financial Institutions</u>

4. The CBM issued a directive on 15 June 2021 wherein it listed the documents that a Non-Banking Financial Institution is required to provide to the CBM as part of its application to seek approval for (a) opening or closing a branch office or (b) relocation of its head office ("**2021 Directive**").

5. The documents listed in the 2021 Directive included an application form, a resolution of its board of directors, a feasibility study, photos of the location of the new office etc.

6. Further, it stated that the NBFI is required to provide evidence that it has paid MMK 200,000 as the fee for opening a new branch office (as per Directive 3/2017 dated 26 January 2017).

7. On 25 November 2022, the CBM published a directive wherein it stated that on and from the said date, an NBFI is required to deposit a fee of MMK 200,000 along with an application and supporting documents for approval of CBM regarding the relocation of its head office and/or branch office, whether in the same township where it operated or elsewhere.

CBM REFERENCE EXCHANGE RATE AND FOREX TRADING BAND

<u>CBM Reference Exchange Rate</u>

1. In 2012, the then government of Myanmar decided to allow the foreign exchange value of the Kyat to be determined through a managed float. The reference exchange rate was around MMK 1,105 per USD 1 (the "**RER**"). In 2019, CBM issued an instruction to publish the RER daily based on the transactions in the foreign exchange market.

2. In April 2022, after issuing the notification requiring the conversion of foreign currency inward remittances, the CBM issued a directive that set the foreign currency conversion rate at MMK 1,850 per USD 1.

3. The CBM issued a press release on 6 August 2022, revising the reference exchange rate to MMK 2,100 per USD 1.

<u>Forex Trading Band</u>

4. In 2012, the CBM introduced a forex trading band of 0.8%. AD Banks and licensed money exchangers were required to offer buy and sale rates within the abovementioned band. After that, CBM formally dropped using the said trading band in 2018.

5. On 9 April 2021, the CBM directed the authorized dealer licensed banks and money changer licensees ("**licensees**") to sell, purchase and exchange foreign currencies at the reference rate with a maximum spread of 1.6%. After that, on 12 May 2021, the CBM required the licensees to sell, purchase and exchange foreign currencies at the reference rate with a maximum spread of 1% and further amended the reference rate to +/- 0.8% on 3 August 2021.

6. On 9 November 2021, the CBM issued another directive requiring the licensees to sell, purchase and exchange foreign currencies at the reference rate with a maximum spread of +/- 0.5%. However, this was again revoked by the CBM on 4 April 2022.

7. In August 2022, CBM issued a directive instructing all AD Banks and non-bank

entities with a money changer license, on and from its issue date, to sell, purchase, and exchange foreign currencies within ± 0.3% of the reference rate established by the CBM. Furthermore, it stated that companies with a remittance license must conduct inward or outward remittances in foreign currencies within the said band. The directive prescribed legal action under the Foreign Exchange Management Law and Regulations against licensed institutions found to be conducting forex trading exceeding the prescribed band.

MINIMUM RESERVE REQUIREMENT

1. On 21 May 2012, the Central Bank of Myanmar set the reserve requirement ratio at 10% of the total deposits.

2. On 12 July 2013, Myanmar's president approved the new Central Bank Law and the CBM reduced the minimum reserve requirement to 5% of the total deposits on 17 February 2015.

3. To alleviate the banks' capital position due to the pandemic, the minimum reserve requirement was temporarily reduced from 5% to 3.5% in 2020 and then further reduced to 3% in 2021.

4. Initially, the minimum reserve calculation was based on customers' total deposits other than banks. On 25 November 2021, to facilitate the banks' monetary management and ensure that they can maintain sufficient cash reserves, the CBM temporarily adopted a new formula for calculating the minimum reserve requirement ratio. According to the new formula, in addition to the current accounts of banks, cash in the banks should also be included while calculating the minimum reserve ratio.

5. On 25 March 2022, the CBM extended the revised reserve ratio and calculation period until 31 March 2023.

6. On 7 October 2022, the CBM published a directive which stated that the calculation of a 3% minimum reserve ratio should be divided as follows:

   (a) 2.5% must be from bank's MMK deposits held with CBM; and
   (b) 0.5% should be from cash in hand.

7. The directive stipulates further that this calculation will be effective from the maintenance period (12 October 2022 – 8 November 2022) until (1 March 2023 – 28 March 2023). Further, this directive repealed the previous directives on this matter.

Interest on Excess Reserve

8. On the same date as above, the CBM published a letter stating that it will implement a system for calculating and paying interest on the MMK deposit amounts that exceed the minimum reserve amount required to be maintained by the banks.

   The aim was to incentivize banks to deposit the excess amount with CBM and earn interest on such an amount.

9. In the letter, CBM, among other things, stipulated the following key provisions:

   (a) The CBM shall pay interest on the average excess reserve to banks if such banks have average excess reserves amounting to a minimum of MMK 10 billion and a maximum of MMK 50 billion;
   (b) The CBM shall determine the rate of interest on the average excess reserves at 3.5% as per interbank rate (O/N);
   (c) The CBM shall periodically review the amount prescribed for the minimum and maximum average excess reserves for which it will pay interest and the interest rate to be paid for the average excess reserves and revise them (to increase/decrease) to meet the market requirement;
   (d) The payment of interest on excess reserves shall commence from the

maintenance period (12 October 2022 – 8 November 2022); and

(e) The interest on excess reserves shall be paid to the State-owned banks, private banks, and subsidiaries of foreign banks permitted to conduct retail banking in MMK.

CARD BASED TRANSACTIONS

1. On 7 October 2012 and 16 January 2017, the CBM instructed the banks to allow credit limits of up to USD 5,000 on international prepaid cards and MMK 5 million on international credit cards.

2. The CBM issued a letter on 7 April 2022 instructing the banks in Myanmar to readjust the maximum credit limits available for international credit cards as follows:

   (a) USD 2500 for international prepaid cards (MasterCard, VISA, UPI prepaid cards);
   (b) MMK 5 million for international credit cards (MasterCard, VISA, UPI credit cards and international co-brand cards such as MPU-UPI, and MPU-JCB cards); and
   (c) Banks must submit to CBM information on issuing and acquiring international prepaid cards, international credit cards and international co-brand cards every week.

MMK PAYMENTS FOR LOCALLY PROCURED GOODS AND SERVICES

1. On 28 May 2015, the CBM issued a letter requesting the Ministries, Regional and State Governments to make all payments concerning domestic transactions in Kyats and refrain from specifying prices in a foreign currency.

2. However, since the request was not considered, the CBM again published a letter on 6 December 2016, placing its request on the same lines as in 2015. This was again done on 3 January 2017 and 7 August 2018. Private enterprises were also required to follow the requirements under the letter.

3. On 25 May 2022, the CBM issued a letter referencing the letters above and urged the Union Ministries, Regional and State Governments, Nay Pyi Taw Council, Yangon City Development Committee and Mandalay City Development Committee to (a) use only MMK for domestic transactions and payments by these bodies, their subsidiary organizations, departments and enterprises; (b) instruct the private enterprises under their regulatory control to transact only in MMK and to comply with the Foreign Currency Conversion Notification. The letter also requires them to inform the CBM once they issue such instructions to the entities mentioned in (b) above.

ANTI-MONEY LAUNDERING

1. In 2019, the CBM issued a directive on customer due diligence to licensed banks ("**CDD Directive**"), requiring them to place effective internal frameworks for managing their money laundering and terrorist financing risks. Some of the critical measures for banks to follow under the CDD Directive to combat money laundering were as follows:

   (a) conduct risk assessments and consider factors such as customer risk, country or geographic region, products and services risks, and delivery channel risk;
   (b) apply enhanced CDD measures in transactions identified as high-risk situations and adopt risk mitigation measures;
   (c) implement enhanced CDD measures when conducting occasional transactions (single or multiple interconnected transactions) with a customer who doesn't have an existing relationship with the bank, provided that the transaction amount equals or exceeds the threshold of Kyat or any other currency equivalent to USD 15,000; and

(d) report suspicious transactions exceeding a certain threshold amount to the Financial Intelligence Unit.

2. The CDD Directive also carved out the measures for banks to identify and conduct enhanced scrutiny of transactions involving 'politically exposed persons'. It further stated, among other things, that banks were prohibited from initiating or maintaining a correspondent or business relationship with a shell bank in a foreign country that permits its accounts to be utilized by a shell bank.

3. In October 2022, the Financial Action Task Force ("**FATF**") placed Myanmar in the "List of High-Risk Jurisdictions Subject to a Call for Action." In a statement dated 21 October 2022, FATF called on its members and other jurisdictions to "apply enhanced due diligence measures proportionate to the risk arising from Myanmar."

4. Pursuant to this, on 22 October 2022, CBM issued a press release announcing the requirement for businesses to abide by the FATF's 40 recommendations issued by the FATF which include requirements regarding combating anti-money laundering activities and countering the financing of terrorist activities. It informed that local Myanmar banks would encounter enhanced due diligence conducted by foreign correspondent banks while participating in international financial transactions. The CBM noted that Myanmar had already achieved 24 recommendations out of 40 set by FATF and had established an appropriate action plan.

5. In November 2022, the Microfinance Supervisory Committee under the Ministry of Planning and Finance issued a directive on risk-based management regarding anti-money laundering and combating terrorist financing to be observed by microfinance institutions ("**MFI Directive**") which:

(a) Prescribed policies and systems to be implemented by the MFIs to identify and evaluate risks related to AML and CFT from microfinance activities;

(b) Outlined several essential processes that should be incorporated into the MFI business model to address the risks of money laundering and terrorist financing in microfinance activities, such as identifying and evaluating risks, monitoring and supervising cash transactions of members and overall transactions of MFIs, reporting suspicious transactions to competent authorities, maintaining records in compliance with AML laws and so on;

(c) Set out four levels of risk management for managing AML/CFT-related risks such as risk identification; risk assessment; risk management; risk monitoring; and

(d) Set out the functions and duties of the management team and compliance officer.

PART III: FOREX NOTIFICATIONS OF 2023

FIT AND PROPER CRITERIA FOR MANAGEMENT AND OWNERS OF FOREIGN EXCHANGE LICENSEES

Remittance Business

1. On 15 November 2019, the CBM issued a directive regarding the application to obtain a license for providing offshore remittance services in Myanmar. The directive contained, among other things, the documents required to apply for the license, the time taken by CBM to approve/reject the application and certain terms and conditions regarding the operation of such businesses. However, it did not discuss the eligibility-related aspects for the management and owners of such businesses.

2. The CBM issued a directive on 12 January 2023 to set out the rules regarding the "fit and proper criteria" for the appointment of management-level personnel for remittance businesses.

3. The directive stated as follows:

(a) The rules applied to:

- substantial shareholders and beneficial owners (defined as those holding more than 5% of the shares of a company or who have the right, directly or indirectly, to appoint or remove the majority of the board of directors or have significant control over a company), and
- the directors and officers (such as the financial, operating, compliance, company accountant, and risk management officer).

(b) Companies were required to submit a written request letter and other relevant documents to the CBM for approval of the appointment of a director or other management officers on the date that is 30 days prior to such appointment taking effect. Within a further 30 days from the date of receipt, the CBM will review the application and provide its decision to approve or reject the candidate.

(c) List of the minimum qualifications for candidates for the respective positions, including the main criteria that the CBM would consider while reviewing the applications.

(d) The board of directors was responsible for ensuring that all directors and management officers complied with the directive. Upon becoming aware that a director or management officer did not meet the fit and proper criteria, it must remove the person from their position within 15 days.

Money Changer Business

1. The CBM issued a directive on 12 January 2023 to set out the rules regarding the "fit and proper criteria" for appointing management-level personnel for money changer businesses.

2. The rules apply to substantial shareholders and beneficial owners (defined as those holding more than 5% of the shares of a company or who have the right, directly or indirectly, to appoint or remove the majority of the board of directors or have significant control over the company), and the directors and management officers.

OVERSEAS TRAVEL OF MANAGEMENT-LEVEL OFFICERS OF BANKS

1. On 13 February 2023, the CBM issued a letter to the banks instructing them to comply with certain requirements regarding the overseas travel of their CEOs and management-level officers as follows:

(a) The relevant bank must submit an application to the CBM requesting approval for overseas travel by its CEO or management-level officers and the relevant information at least five (5) days before the trip. The CBM may take administrative action against the bank if it fails to obtain said approval.

(b) The overseas trip cannot last longer than three months. If there is a particular reason for the trip duration to be longer than three months, an application must be made 15 days prior to the trip to request an exception. The applicant must specify the information of the person acting on behalf of the officer during his absence, including details such as the name, position, and duration of his appointment.

(c) The bank must notify the CBM within three (3) business days from the date the officer returns to Myanmar.

(d) The letter authorized CBM to take administrative action against the bank for failure to comply with the instruction per the FIL.

STANDARD OPERATING PROCEDURES FOR CLEARANCE OF TAX LIABILITIES BEFORE OFFSHORE REMITTANCE

1. On 25 April 2023, the Ministry of Planning and Finance published the standard operating procedures ("**SOP**") to be followed by the Internal Revenue Department and the AD Banks in reviewing applications for the offshore remittance of foreign currency exceeding USD 10,000. The SOP takes effect on and from 1 May 2023.

2. Some of the key responsibilities of the Internal Revenue Department ("**IRD**") under the SOP are as follows:

   (a) To issue withholding tax or other relevant tax receipts to the foreign currency remitter.
   (b) To answer any questions the AD banks and foreign currency remitters might have regarding the process.

3. The SOP lists the documents to be submitted to the AD Banks by persons requesting foreign currency remittance out of Myanmar for different categories of current account payments, such as:

   (a) **Profits or payment for goods** - evidence of a tax receipt or tax exemption for the relevant income year.
   (b) **Salary** - a certificate of withholding from salary income.
   (c) **Interest or royalty payments under any licenses (including trademark, copyright), or service fees** - the tax receipt issued by the relevant tax office under the IRD evidencing that withholding tax has already been paid or that no tax is due.

REPORTING FOREX TRADING ACTIVITIES IN THE MARKET

1. On 21 June 2023, the CBM issued a letter to AD Banks assigning them the responsibility of reporting forex trading activities in the market. The letter emphasized the mandatory use of the CBM's online trading system for all transactions conducted between AD Banks and their customers.

2. Some of the key aspects of the letter are noted below:

   (a) The AD Banks must submit daily reports of their customer dealings to the CBM via the online platform. These reports should include lists of companies wishing to sell and buy forex. The submission timeframe for these reports is between 10:00 AM and 11:30 AM.
   (b) During the submission process, it is essential to provide comprehensive lists covering buying and selling activities, encompassing trade and non-trade purposes.
   (c) Companies wishing to sell forex must submit the following information to the CBM after verification by AD banks: company's name, type of business, amount to be sold, currency type, offer rate, settlement date, expiration date, and source of income (export proceeds, exempted company, CMP (Cut-Make-Pack) and salary).
   (d) Similarly, companies interested in buying forex must submit the following information to the CBM after verification by AD banks: company's name, type of business, amount to be purchased, currency type, the reason for the purchase (if it pertains to trade, specify the type of goods and provide the import license or ID; if it is not trade-related, state the purpose), bid rate, and settlement rate.
   (e) AD banks must ensure the accuracy and completeness of the information provided during the verification process before submitting the reports to the CBM.

3. The letter outlines the following key roles of the CBM:

   (a) The CBM will securely handle the information regarding the list of buyers and sellers and the proposed transactions between AD banks and customers.

(b) It will determine the eligible companies, transaction amounts, and exchange rates by negotiating with AD banks.

(c) It will provide the banks with the list of permissible transactions by 1:00 PM. These transactions must be conducted using the T+1 settlement model, meaning the settlement or delivery of the transaction should occur one business day after the trade date.

(d) Bank-to-bank purchase and sale dealings must initially be submitted to the CBM through the online trading plan and subsequently executed using the Refinitiv Platform.

(e) The CBM website will publish a daily list of completed transactions and the corresponding Weighted Average Rate.

4. The CBM will finance SWAP and purchase and sell foreign currency in the foreign exchange market to procure essential goods. AD banks must adhere to the specific instructions outlined in the letter while engaging in forex trading.

5. Furthermore, on 22 June 2023, the CBM issued a notice stating that the exchange rate used in the online trading plan represents the market exchange rate. Importantly, CBM has cautioned that exchange rates mentioned on platforms such as social media are considered illegal.

NOTIFICATION TO AD BANKS REGARDING PROCESSING OF IMPORT PAYMENTS

1. On 3 July 2023, the CBM issued a letter to the AD Banks informing the decision by the FESC meeting (49/2023) requiring them to do the following:

(a) Verify the license approval date, shipping date, and ID date when examining companies for payment transfers related to imports, as trade activities are permitted solely upon receipt of the license, and import payments made before acquiring the license are prohibited. Furthermore, they must avoid submitting cases where the license date is later than the ID date;

(b) Consider the prohibition of utilizing advanced payment Telegraphic Transfer (TT) for imports, and carefully assess the necessity of such payments upon submission. If it is determined to be accurate, each case must be individually presented for approval;

(c) Must not submit cases involving both licensed and non-licensed goods with the identification (ID) period exceeding six months; and

(d) Must carefully examine whether the identification (ID) period is within three months after obtaining the license. If the ID period exceeds three months, it is necessary to extend the license.

2. The transactions between bank-customer and customer-customer must follow the online trading system introduced since 22 June 2023. The requirement for the bid/offer to be presented in this online trading system was informed to the banks.

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The information provided here 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.

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"DFDL HAS AN EXTREMELY PROFESSIONAL OUTLOOK, IS VERY PROMPT IN ITS RESPONSE TIMES AND AVAILABILITY, AND HAS A NETWORK ACROSS THE MEKONG REGION THAT WORKS WELL, CONTAINING PEOPLE WITH DIFFERENT SKILL SETS."

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DFDL was established in 1994 and founded on a unique vision: to create an integrated legal and tax advisory firm, with in-depth knowledge of the jurisdictions where we are based. DFDL is the first leading international law firm specialized in emerging markets with regional legal and tax expertise developed throughout the Mekong region, with a dedicated focus on Southeast Asia.

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DFDL's Myanmar dedicated professionals possess the acumen and insight necessary to assist you in navigating the various legal complexities and challenges, while simultaneously reaping the vast opportunities that this dynamic region continues to offer. We strive to provide concise, commercially focused and innovative advice, drawing on over 25 years of wide-ranging experience and finely tuned local knowledge of the countries in which we operate.

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- Real Estate and Construction
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- Trade and Customs Advice
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- Visa, Stay permit and Foreigner Registration Certificate (FRC) application assistance

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DFDL is honored to have received recent awards from leading industry publications recognizing our achievements, including the following:

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Outstanding – General Business Law
Highly Recommended – Banking and Financial Services/Infrastructure
Myanmar
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Outstanding – Banking and Financial Services/Energy/General Business Law
Highly Recommended – Infrastructure/Real Estate/ Technology and Telecommunications
Thailand
Highly Recommended – Banking and Financial Services/Banking and Finance/Construction /Consumer Goods and Services/Corporate and M&A/Energy/Infrastructure/ /Tax/Technology and Telecommunications
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Vietnam
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2022 Asia Business Law Journal Thailand
Tax Law Firm of the Year

2023 Chambers Asia Pacific
Winner of Mekong Region Firm of the Year 2020-2021
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Band 1 – General Business Law – Cambodia, Lao PDR, Myanmar
Band 2 – Corporate/M&A – Vietnam
Band 3 – Corporate & Finance – Bangladesh
Band 3 – Projects & Energy, Real Estate, Tax – Thailand
Band 3 – Projects, Infrastructure & Energy – Vietnam
Band 4 – Technology, Media, Telecoms (TMT) – Thailand
Band 4 – Corporate/M&A – Thailand
Spotlight Table – Tax – Vietnam

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Tier 2 – Project Development – Thailand & Vietnam
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Tier 3 – Project Development: Foreign – Singapore

2023 The Legal 500 Asia Pacific
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Tier 1 – Tax – Vietnam
Tier 2 – Banking and Finance – Bangladesh
Tier 2 – Corporate and M&A – Vietnam
Tier 2 – Projects & Energy – Thailand & Vietnam
Tier 2 – TMT – Thailand
Tier 3 – Corporate And M&A – Bangladesh
Tier 3 – Banking and Finance – Thailand
Tier 3 – Restructuring And Insolvency – Thailand
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Tier 4 – Corporate And M&A – Thailand
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ABOUT DFDL

As a leading international law firm serving the Southeast Asian region, DFDL has also developed “desks” to serve our clients from Singapore, China and India, and which operate or have business in the DFDL Southeast Asian countries. From DFDL’s diverse offices and desks, its experts assist clients on local and cross-border transactions with expertise and a dedicated focus on Southeast Asia.

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