DFDL

BANKING AND FINANCE UPDATE COMPENDIUM

2021 - 2022

INTRODUCTION

The year 2021 was marked by several changes in Myanmar. The change in government, along with the COVID-19 crisis, led to significant legislative developments that has not yet been tracked by legal experts and industry players.

In this *compendium,* DFDL has tracked all relevant notifications, directives, announcements, guidelines and clarifications relating to the *banking and finance sector* issued to the Central Bank of Myanmar and the Ministry of Commerce to provide a summarized analysis of the latest legislative developments that have taken place in Myanmar.

The *compendium* has been divided into specific subject matters for the convenience of readers, providing a sequential timeline of the developments that have taken place, an overview of the present position, and as a holistic guide to various stakeholders.

CALCULATION OF LIQUIDITY RATIO

1. Liquidity Ratio means the net Liquid Assets expressed as a percentage of Volatile Liabilities as occasionally prescribed by the Central Bank of Myanmar ("**CBM**"). Treasury bonds issued by the CBM are a form of security that can be used to assess compliance with the liquidity ratio calculation. The CBM, however, is only allowed to calculate 50% of the value of the treasury bond.

2. Liquid Assets means assets maintained by the central bank in Myanmar at all times or over such a time as specified by the CBM. This includes the list of assets weighted at a rate prescribed by the CBM from time to time. Volatile Liabilities mean the sum of liabilities listed in the directive issued by the CBM, or as prescribed by the CBM.

3. The CBM issued a directive on 9 April 2020 whereby it provided that for calculating the liquidity ratio, treasury bonds with a term of one year or more shall be counted at 90% (instead of the previous 50%) from 20 April 2020 to 30 September 2020.

4. The CBM further issued a directive on 23 September 2020 through which the period was extended by six months, with effect from 1 October 2020 to 31 March 2021.

5. On 16 February 2021, the CBM issued another directive which further extended the period of calculation for treasury bonds at 90% from 1 April 2021 to 30 September 2021. On 7 May 2021, the CBM temporarily further increased the weighting of treasury bonds to 100% (from 90%) until 30 September 2021. The CBM further issued a directive to extend the 100% treasury bond weighting period from 1 October 2021 to 31 March 2022.

6. On 21 March 2022, the CBM further extended the period of calculation (100% weightage to treasury bonds) by another year up to 31 March 2023. No other liquidity ratio-related guidelines or instructions have been changed.

7. The impact of this liquidity ratio calculation amendment is beneficial for banks that will be capable of improving their liquidity ratio as their weighting has been improved. However, since compliance with the liquidity ratio requirements for all banks has been postponed until 2023, the practical impact of the *liquidity ratio-related calculations* on banks may not be significant.

DIGITAL PAYMENTS AND CASH PAYMENT THRESHOLD NOTIFICATIONS

1. The CBM on 16 June 2021 issued a letter to all banks to improve their liquidity, assets, and liabilities management to properly implement the objectives of saving accounts and term

deposit accounts. In the letter, the CBM instructed the following:

(a) If a customer requests to withdraw saving deposits, banks shall not issue cash immediately as being done for current deposits and shall issue cash under the terms and conditions of the savings accounts.

(b) For account transfers, since the CBM has capped weekly withdrawals for a single savings account (transfer to the current account or from the present account), account transfers must be carried out within such withdrawal limits once a week;

(c) Cash must be issued for time deposits only on the maturity date. Account transfers must be carried out under the CBM's instructions, and interests of time deposits must be issued monthly or quarterly subject to the revenue of the bank;

(d) In the course of making payments to tender winners for government projects, payments must be made to the bank account of such entrepreneurs only through account transfers, cross cheques, and payment orders;

(e) When issuing cash from the bank accounts of companies or organizations or individuals, banks shall prioritize carrying out account transfers for customers based on their requirements except in cases in which cash is required (such as payroll distributions, grant aids, compensations, pensions, etc.).

(f) Officers-in-charge from every bank shall negotiate and collaborate to carry out account transfers and digital payments;

(g) Banks shall target and promote digital payments and account transfers when making payments; and

(h) Banks must scrutinize and allow merchants to withdraw cash for 50% of their proceeds (maximum amount) earned from digital sales (wallet/cards/account transfer) within a month. Such cash withdrawals can be made two or three times a month.

2. Further by way of a letter dated 25 June 2021, the CBM instructed the following:

(a) Merchants shall complete and submit the prescribed form to the relevant bank when requesting to withdraw 50% of the total sale proceeds in cash that are received through digital payments and the banks must submit such forms provided by the merchant to the Accounting Department under the CBM through the email address: nptpssdept@gmail.com.

(b) To issue 50% (maximum) of the total sale proceeds that the merchants have received, the banks shall seek approval from the CBM by completing and submitting the prescribed forms;

(c) The banks shall also be required to provide the CBM with the name and position of the authorized person who will take responsibility for such submitted accounts;

(d) The CBM would allow the cash withdrawals after examining the following: digital sales presented by acquiring banks, accounts submitted by issuing banks, acquiring of merchant transactions related to MPU, VISA, MasterCard, JCB, and UPI according to the relevant banks, and bank statements of merchants.

3. Subsequently, the CBM on 3 November 2021 issued a notification for the efficient implementation of payment systems in Myanmar. As per this notification, any payment in cash (including payments for the purchases, sales, and transfers of capital

assets, and services) should not exceed MMK 20 million (approx. USD 10,825) at a time.

Under this notification, payments above MMK 20 million, shall be paid by using digital forms of payment methods such as mobile banking, payments through internet banking, payments by bank cards, payments by cheques/payment orders, and account transfers.

Those who do not comply with this notification may face legal action from the CBM. This could be in the form of administrative penalties such as fines., However, there are no further guidelines on actions that may be taken by the CBM.

4. The CBM also issued the following clarifications concerning the notification issued on 3 November 2021:

   i. The objectives of limiting the cash payment are to facilitate the cash management; support the government's transition to a digital economy infrastructure; simplify payment systems, and effectively implement anti-money laundering controls.

   ii. The maximum amount of the (physical) cash payment for each transaction of the same goods is limited to only MMK 20 million for an individual or organization. Any additional amount must be paid using various digital payment modes through the banking system such as mobile banking, internet banking, bank card payments, cheques, payment orders (PO), and account transfers.

   iii. The term *capital assets* includes land, buildings, vehicles, and capital goods including shares, promissory notes, and similar deeds.

   iv. The term *goods* includes imported items or various items locally manufactured (for example, gold and goldware, fuel oil, cooking oil, construction materials, and raw materials).

   v. The term *services* includes all types of services such as education and health expenses, insurance fees, electricity charges, wedding packages, travel and tourism, and so on.

   vi. The term *other types of payments* include other payments that are not related to goods and services (for example, payments for taxes and duties.)

   vii. The notification applies to all institutions and associations, including but not limited to, transactions that are person to person, business to business, business to person, government to business, government to government, and business to government (excluding transactions conducted between banks and non-bank associations).

   viii. The term *payment for transfer* means the payment made for transferring any share contained in capital assets and deeds such as promissory notes.

   ix. Purchases worth MMK 21 million can be made by depositing MMK 21 million into the bank and buying a purchase order, by buying certified cheques, or by providing the proof of depositing such an amount into the bank account of the seller. If wishing to make the payment in cash, MMK 20 million can be paid in physical cash, and then the remaining amount can be paid through the banking system (such as a cheque).

   x. For payments of MMK 100 million, 20 million in cash in 5 instalments cannot be made. For the selling and buying of the same goods, the amount that one person or organization can make payment is MMK 20 million per transaction. The exceeding amount must be paid using the banking system. Cash payment in various instalments for the purchase/acquisition of the same goods or services within one day by one person or organization shall be considered a one-time payment.

xi. Persons who do not have a bank account can purchase payment orders and certified cheques from banks or, if the seller has a bank account, the transaction can be made by acquiring documents evidencing that cash is deposited into the seller's account. Those, who make payments, can engage in transactions through digital payment, mobile banking agents, or mobile financial services such as Wave Money, OK$, and so on.

xii. Cash can be withdrawn or deposited into one's account without such prescribed limits.

xiii. Loan repayments can be made in cash without adhering to such limits.

xiv. It is permitted to purchase a car worth MMK 50 million in cash in monthly instalments if the transaction is a hire purchase with the bank and the bank is paid monthly instalments in cash.

xv. If the buyer makes payments to the seller's new account through the digital system, the seller can withdraw 50% (of the payment) in cash and the rest of 50% in cash can be withdrawn within 31 days to 45 days at the seller's own accord. If a buyer makes the payment to the seller's old account through the digital system, 25% (of the payment) in cash can be withdrawn.

xvi. For commodity exchanges (such as rice, corn, sesame, chilis, onions, etc.) between cities/regions, cash remittances via the bank are permitted. The CBM clarified that based on its studies, the commodity exchange remittances per individual does not exceed the per day cap of MMK 20 million.

xvii. The payment up to the limit of 20 million MMK in cash can be made for two separate transactions of different types of items.

xviii. If the seller wishes to withdraw cash from the bank account, he or she will be allowed to withdraw up to the deposited amount without limit for a new account whereas he or she can withdraw 50% of the payment in two or three instalments for an old account. For payroll distributions, grant aids, and health issues related to the COVID-19 pandemic, cash withdrawals can be made without limit subject to the status of the cash reserve of the bank.

xix. The government departments and regulatory authorities will supervise and take legal action, as may be appropriate for non-compliance.

xx. Other countries applying such measures include Malaysia, India, Austria, and others.

xxi. If the seller does not accept the digital payment, he or she may be subject to legal action.

xxii. Only upon presenting the documents evidencing those transactions are carried out through the banking system, will the seller be permitted by the government departments for cash withdrawals and be entitled to other benefits such as changing the title of real estate and motor vehicles.

xxiii. The cash payment restrictions prescribed by the CBM shall not apply to transactions conducted between banks and financial institutions.

5. The CBM further issued a letter on 15 November 2021 concerning the digitization of payments. The letter states that banks will be required to credit payments, that are received by sellers in cash or through account transfer or cheques, payment orders, or digital payments for capital assets, goods, and services including other payments to his/her new bank account or old bank account of the seller. Furthermore, banks will be required to carry out the following:

   (a) For money transferred into the new account, the bank will allow the seller to withdraw cash up to the deposited amount without the limits that are currently permitted for new accounts. In the event of cash that has been deposited into the seller's bank account, the bank will arrange for cash withdrawals. For money transferred in as digital sales, the bank will proceed with it under the prescribed withdrawal caps as mentioned in the letter dated 25 June 2021.

   (b) For money transferred into the old bank account in cash, the bank will allow withdrawing only such a deposited amount in cash. For money transferred in as digital sales, the bank will proceed with it as mentioned in the letter dated 25 June 2021.

   (c) The banks will allow to carry out cash transfers within their bank branches; money transfers from their banks to other banks using CBM-NET; cheque clearance without any restriction.

   (d) Banks will encourage people in areas, which do not have access to banking services, to use the banking system. Furthermore, banks should plan for the public to acquire banking services and to connect with other payment platforms such as mobile financial services and mobile agents.

   (e) To increase reliance on the digital payment system, banks must make arrangements to ensure that customers can deposit the money into banks smoothly through mobile financial service providers. The banks will also need to facilitate the money transfers between their branches as well as other banks without delay. If the banks have any difficulties in doing so, the CBM may be contacted through email at complaint@cbm.gov.mm and phone numbers: 067-418251 and 067-418316, and the CBM will take any necessary action.

   (f) The banks are instructed to carry out the following: Know Their Customers (KYC) under the Directive on Customer Due Diligence for Anti-Money Laundering and Combating the Financing of Terrorism; screen customers under the Customer Due Diligence procedures; and identify the level of risk under Clause 9 of the Directive on Management for the Risk of Anti-Money Laundering and Combating the Financing of Terrorism.

   (g) The transfers of funds, which exceed the threshold set out by regulatory authorities and the CBM, shall be reported to the CBM in line with the current reporting system. If the government bodies, external auditors, regional officers-in-charge, and supervisory authorities request to inspect, banks will need to prepare in advance to collaborate with them with approval from the CBM.

   (h) All banks are required to collaborate with the CBM in facilitating the cash management, assisting the transition to the digital payment systems, and expediting the payments.

   (i) Furthermore, all banks are required to strictly comply with the stipulations set out by the CBM. Upon failing to abide by such stipulations, banks will be subject to any administrative action prescribed in Section 154 of the Financial Institution Law (warning, fine, orders including restricting operations of the bank or temporary suspension or termination from duties of its directors, executive officers, administrators, managers or staff who violate the requirements) based on the complaint filed by the CBM.

ESTABLISHMENT, OPERATIONS AND MANAGEMENT OF NON-BANK FINANCIAL INSTITUTIONS

In January 2021, the Central Bank of Myanmar issued a directive regulating the establishment, operations and business conduct of non-bank financial institutions ("**NBFI**") engaged in the business of finance company, leasing or factoring business ("**NBFI Directive**").

The NBFI Directive explains the process and documents required in applying for a registration certificate for an NBFI. It explicitly states that the NBFI registration certificate may be only issued if the company:

a) is incorporated under the Myanmar Companies Law;

b) has met the minimum paid-up capital prescribed by CBM from time to time;

c) has suitable and sufficient technical skills and organizational arrangements including but not limited to internal control and risk management;

d) has a detailed strategy and business plan substantiated by the realistic budget forecast for 3 years; and

e) directors, senior management and substantial shareholders are fit and proper.

The board of directors of an NBFI shall consist of at least 3 directors. The directors, senior management and substantial shareholders of the NBFIs are required to meet the following fit and proper requirements:

a) should not be subject to any investigation or inquiry by any regulatory authority in relation to any fraud, deceit, dishonesty, or any other improper conduct;

b) is of unsound mind;

c) has been declared and has not been discharged.

The NBFI Directive also prohibits the acceptance of deposits by NBFIs. In addition to the requirement of notifying the CBM on change of registered office address, branches, board of directors, the appointment of agents or outsourcing arrangements, the NBFI Directive mandates that NBFIs shall seek prior approval of the CBM where there is:

a) transfer or sale of 10% or more voting shares of the NBFI;

b) sale, disposal or transfer of the whole or any part of the business of the NBFI;

c) change of registered head office or closing of branches;

d) change of company name and logo;

e) an increase in capital, change in shareholders or constitution;

f) change in ownership which may change the status of a domestic company to a foreign company or otherwise;

g) any other information that CBM may deem necessary.

Further, in addition to audited financial statements within 3 months of the end of the financial year, NBFIs are required to submit reports to the CBM on its lending rates periodically in the format prescribed by the CBM.

Non-compliance by any NBFI of the NBFI Directive shall constitute an offence punishable by one or more administrative penalties under Section 154 of the Financial Institutions Law.

CONVERSION OF FOREIGN EXCHANGE INCOME OF RESIDENTS

1) On 18 March 2022, the CBM issued a letter instructing authorized dealer licensed banks in Myanmar (**AD Banks**) to:

   i) Scrutinize and open foreign currency bank accounts for residents who have obtained foreign currencies lawfully and need to carry out foreign currency transactions to conduct their business operations.

   ii) For inward remittances, AD Banks shall ensure that foreign currencies are deposited in foreign currency accounts of the residents upon scrutinizing and confirming that such foreign currencies were obtained lawfully or exchanged/converted from MMK through permitted transactions.

   iii) All outward remittances should be permissible transactions and AD Banks shall convert such foreign currency into MMK when processing domestic payments.

2) On 3 April 2022, the CBM issued a notification regulating the foreign exchange income (whether derived from the trading or not) of residents in Myanmar (**FE Notification**). It mandates that the foreign exchange income received overseas by residents of Myanmar should be remitted to a foreign currency account opened with an AD Bank. Such foreign exchange income should be exchanged in Myanmar kyat within one working day and must be deposited to a Myanmar currency account by the resident receiving it. The FE Notification further reiterates that remittance of foreign currency out of Myanmar must be only carried out through an AD Bank with the approval of the Foreign Exchange Supervisory Committee of the CBM.

Non-compliance with the FE Notifications shall on conviction, be punishable with imprisonment of 3 years or with a fine or both.

3) Simultaneously, the CBM issued instructions to AD Banks for fixing the exchange rate of MMK 1,850 per USD 1. Indicative cross exchange rates for account transactions are also listed in the attachment to these instructions. Any changes to these rates will be set by the directive of the CBM.

4) Thereafter, on 4 April 2022, the CBM issued an order revoking the instruction to sell, purchase and exchange foreign currencies within $\pm$0.5% of the reference rate established by the CBM.

5) On 5 April 2022, the CBM issued a directive to AD Banks for implementing the directions issued on 3 April 2022.

   (i) For export income, on the date of receiving foreign currency in the foreign currency account of the company or individual, AD Banks shall purchase and convert the foreign currency received to MMK at the rate instructed by the CBM and shall lodge such MMK to the Myanmar currency account of the company.

   (ii) For other income, on the date of receiving foreign currency in the foreign currency account of the company or individual, AD Banks shall purchase and convert the foreign currency received in the foreign currency account to MMK at the rate instructed by the CBM and shall lodge such MMK to Myanmar currency account of the company.

(iii) For funds remitted into Myanmar for investment purposes, other than foreign currencies that are exempt with the approval of the Foreign Exchange Supervisory Committee, AD Banks shall purchase and convert the foreign currency received in the foreign currency account to MMK at the rate instructed by the CBM and shall lodge such MMK to Myanmar currency account of the company.

(iv) The offshore loans brought into Myanmar shall be approved by the CBM as per Foreign Exchange Management Law and Regulations. Other than foreign currencies that are exempt with the approval of the Foreign Exchange Supervisory Committee, AD Banks shall purchase and convert the inward funds received in the foreign currency account to MMK at the rate instructed by the CBM and shall lodge such MMK to the Myanmar currency account of the company.

(v) All unilateral transfers shall be approved by the CBM as per Foreign Exchange Management Regulations. AD Banks shall purchase and convert these transfers received in the foreign currency account to MMK at the rate instructed by the CBM and shall lodge such MMK to the Myanmar currency account of the company on the date such funds are transferred.

(vi) All foreign outward remittances by residents must be carried out with the approval of the Foreign Exchange Supervisory Committee. Any remittances including the following activities shall be scrutinized as per Foreign Exchange Management Law and Regulations and shall be submitted to the Foreign Exchange Supervisory Committee for further action:

(a) Payments made for import (including advance payments);

(b) Payments for services and other expenses;

(c) Payment of dividends and transfer of capital back for foreign investments carried out in Myanmar;

(d) Remittance of investments carried out overseas by Myanmar residents;

(e) Repayment of interest and offshore loans; and

(f) Transferring of expenses prescribed in Regulation 27 of the Foreign Exchange Management Regulations.

(vii) On receiving approval from the Foreign Exchange Supervisory Committee for foreign outward remittance, AD Bank shall sell foreign currency to the person permitted for remittance at the exchange rate established by the CBM and shall collect MMK 3 per USD1 as a service charge.

6) On 20 April 2022, the CBM issued a letter listing the following exemptions on which the FE Notification does not apply:

(i) Foreign direct investment activities carried out with the permission of the Myanmar Investment Commission;

(ii) investment operated in special economic zones;

(iii) foreign diplomats and their family members at embassies established in Myanmar from countries with diplomatic relations with Myanmar;

(iv) foreign staff members of the diplomatic corporations with the same rank as the diplomats serving at these embassies;

(v) staff of the United Nations and its agencies established in Myanmar and Myanmar nationals holding a UN staff (*laissez-passer*) passport;

(vi) foreign staff at development agencies assisting Myanmar; and

(vii) 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).

7) When conducting foreign currency transactions, AD Banks must follow proper Know Your Customer and Customer Due Diligence procedures to ensure that the organization qualifies for the exemption mentioned in paragraph 6 above and must report all documentation to the CBM.

8) On 26 April 2022, the CBM issued a letter clarifying that FE Notification will not apply to exporters and importers conducting activities under the China-Myanmar border trade and Thai-Myanmar border trade program. Instead, for the exporters and importers conducting trade under the border trade program, the banks shall comply with the following:

(i) For payments for importation for importers, banks shall process the payments in foreign currency without the approval of the Foreign Exchange Supervisory Committee.

(ii) For export income of exporters, banks shall deposit such income in the exporter's bank accounts in Myanmar in accordance with the provisions of the Foreign Exchange Management Law and Regulations.

(iii) The exporters may use the export income within one month of receiving it or sell such export income to the bank. The remaining income must be sold to the authorized dealer licensed banks without any failure that should be converted into Myanmar kyat.

(iv) All foreign currency transactions conducted under the China-Myanmar border trade and Thai-Myanmar border trade program must be reported to the Foreign Exchange Management Department of the CBM by the respective authorized dealer licensed banks using the Border Trade Module of the Electronic Reporting System.

AMENDMENT OF LICENSE FEES FOR THE BANKS

1. Following the enactment of the Financial Institutions Law 2016, the CBM issued directive on 26 January 2017 specifying the license fees for the banks as follows:

   - The license fees for domestic and foreign banks were 0.1% of their paid-up capital;
   - The fee for establishing one branch was MMK 500,000; and
   - The annual fee for a local bank was 0.1% of paid-up capital on the 2nd of April, and for a foreign bank was 0.1% of its minimum paid-up capital.

2. On 26 February 2021, the CBM amended the license fees for both domestic and foreign banks as follows:

   - The license fee is 0.1% of their paid-up capital and should be paid in MMK;

- The fee for establishing one branch is MMK 500,000; and
- The annual fee is 0.1% of paid-up capital on the 2nd of April.

NEW FOREIGN CURRENCIES ALLOWED FOR TRADING

1. The CBM has allowed the authorized dealer licensed banks and the companies holding the money exchange license to trade US dollar, euro, Singapore dollar, Malaysian ringgit and Thai bhat.

2. On 12 October 2021, the CBM added Chinese yuan and Japanese yen to the types of foreign currencies allowed for trading by the foreign exchange authorized dealer licensed banks, companies and organizations.

FOREIGN CURRENCIES / KYAT DIRECT PAYMENTS ON THE MYANMAR BORDERS

1. To boost bilateral trade activities and the smooth flow of goods; facilitate the payment and settlement system and promote the use of local currency according to the objectives of the ASEAN Financial Integration, the CBM has allowed yuan/kyat direct payments on the China-Myanmar border on 14 December 2021 and bhat/kyat direct payment on the Thai-Myanmar border on 3 March 2022**.**

2. Accordingly, the importers and exporters, who will conduct cross-border transactions, are allowed to open their yuan/bhat accounts at the designated banks as per the guidelines set out by the CBM.

FOREIGN EXCHANGE REFERENCE RATE SPECIFICATIONS

1. The CBM has issued several directives and letters specifying the foreign exchange reference rate during the year 2021 – 2022.

2. 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% on 9 April 2021. Then, the CBM required the licensees to sell, purchase and exchange foreign currencies at the reference rate with a maximum spread of 1% on 12 May 2021 and amended the reference rate as +/- 0.8% on 3 August 2021. However, on 10 September 2021, the CBM revoked the prescribed foreign exchange reference rate.

3. 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.

INSTRUCTION ON FOREIGN CURRENCIES TRANSACTIONS

1. Following the letters on 29 July 2021 and on 23 August 2021, the CBM issued the requirements to be complied by the authorized dealer-licensed banks (“**AD Banks**”) in the selling and buying of foreign currencies in the foreign currencies market.

2. The AD Banks are directed to conduct foreign currency transactions only after verifying it is required to import the goods and obtaining the required documents from the customers for the transaction. The AD Banks must keep a record of all foreign exchange transactions for the CBM's inspection. Further, the AD Banks are required to comply with the provisions of the Foreign Exchange Management Law 2012 and the regulations in conducting foreign currencies transaction.

EMPLOYMENT OF FOREIGN EMPLOYEES IN THE BANKS

The CBM issued a letter on 2 August 2021 ("**Letter**") requiring the banks to comply with some requirements concerning the employment of foreign employees. The key provisions of the Letter are, among others:

1. The banks must seek 30 days prior approval from the CBM before employing any foreigner.

2. The banks must comply with the following conditions for the CBM's approval:

   - The maximum number of foreign employees employed in the bank must be as follows:

     i) Large bank[1] – 25 employees;

     ii) Medium bank[2] – 15 employees; and

     iii) Small bank[3] – 8 employees.

   - No foreign employee is allowed to be appointed as Governor or Vice-Governor in the citizen-owned banks.

   - If the foreign employee is appointed as Chief Executive Officer, a Myanmar citizen must be appointed as Deputy Chief Executive Officer.

   - Foreign employees may be appointed as the Head of Department only for up to 50% of the total department of the banks. If the Head of Department is a foreign employee, the Deputy Head of Department must be a Myanmar citizen.

   - The bank must submit the details concerning the assigned projects, skills and training programs to be given within the department to the foreign employee, and other detailed particulars specified by the CBM.

3. The banks must seek approval of the CBM for the appointment of foreign employees as a member of the board of directors of the bank as per the equity participation in banks.

4. The foreign employees must seek approval from the CBM to travel to their home country or overseas for family or business-related matters and must inform the CBM if they return to Myanmar. The duration of the travel must not exceed three months but can be extended for special matters with the approval of the CBM (Note: The Letter does not mention what are the special matters. We understand that it will be decided on a case-by-case basis).

5. A foreign employee can be employed in a bank for a maximum term of three years including the probationary period and the bank must seek approval of the CBM for the extension of the employment, if applicable. If satisfied, the CBM will allow the bank to extend the employment for additional two years.

[1] The receivable of the bank is more than 5% of the market share.
[2] The receivable of the bank is more than 1% of the market share but less than 5% of the market share.
[3] The receivable of the bank is less than 1% of the market share.

6. Foreign employees, through the relevant bank, must report to the CBM for the termination of their employment or moving to another organization upon the termination of employment. The report must be conducted seven days before the termination of their employment, as applicable.

WRITING-OFF NON-PERFOMING LOANS

The CBM issued a directive on 20 January 2022 concerning the Write-Off of loans. It applies to the banks and non-bank financial institutions ("**Financial Institutions**") and provides the methods, policies and procedures to be followed by the Financial Institutions in writing off the loans. The key provisions are, among others:

1. Financial Institutions are required to set out and maintain:-

   (i) sufficient internal policies, practices, and procedures in respect of investment policies;

   (ii) measures in their policies as well as risk management and internal control procedures relating to the amount to be written off in the statement in case, they do not receive their loans, advances, balance sheets, and other liabilities that are not included in balance sheets; and

   (iii) proper policies and procedures regarding write-offs that ensure non-performing loans be written off promptly and that take into account actual repayments and expectations for the recovery and collection of loans.

2. The board of directors must be authorized to set out the internal control system and review the risks of loans as specified by the Directive on Risk Management Procedures issued by the Central Bank of Myanmar on 20 November 2020.

3. The Financial Institutions must write off the amount of actual loss in the statement in line with the International Accounting Standards.

4. Although banks and non-banking financial institutions may write off any amount of the loan, they must continue collecting to recover the loan, and the contractual right to recover it shall not be void.

5. The methods of writing off regarding the related parties must be included in the procedures of writing off non-performing loans and internal controls of banks and non-banking financial institutions. However, the writing off of non-performing loans of related parties must be approved by the board of the Financial Institutions.

6. The policies, procedures, and resolutions in respect of writing-off including an event of writing-off non-performing loans of the related parties shall be reported to the CBM.

EXPORT EARNINGS NOTIFICATIONS

1. On 3 September 2021, the CBM announced that the exporter must sell their unused export income that is in foreign currency at market price to the authorized dealer licensed bank within four months of the receipt of the export income.

2. On 3 October 2021, the CBM amended the period of export earnings conversion into Myanmar kyat. Exporters can use their export earnings themselves or sell them to any banks in Myanmar not holding an authorized foreign exchange dealer license or holding an authorized dealer license within 30 days of receipt of the export earnings in their bank accounts.

   (i) Exporters can utilize their export earnings themselves or sell them either to banks in Myanmar not holding authorized foreign exchange dealer license or holding authorized dealer license within 30 days of receipt of the earnings in their bank accounts.

(ii) Exchange the remaining balance of export earnings not utilized or exchanged to Myanmar kyat within the time frame prescribed by the CBM at the banks holding authorized dealer licenses.

(iii) Banks not holding authorized dealer licenses who purchase export earnings must utilize or exchange the export earnings into Myanmar kyats within 30 days of purchase; and

(iv) Banks not holding authorized dealer license who do not utilize or exchange purchased export earnings must sell the export earnings only to banks holding authorized dealer license within 30 days of purchase.

CASH AVAILABILITY AND WITHDRAWAL LIMITS

1. **Withdrawal limits via mobile wallet accounts and OTC counters:** On 30 April 2020, the CBM increased the amount for mobile transfers, and removed the monthly maximum balance limit on 29 May 2020. Subsequently, the mobile banking withdrawal limit was increased on 3 March 2021. The mobile financial service provider must comply with the following:

   - prioritize to carry out the electronic payment without limitation amount;
   - issue MMK 3 million per day (or) MMK 20 million per week for withdrawing the money from registered mobile wallet accounts and OTC counters; and
   - coordinate with the relevant banks for pension and farmer loans.

2. **Withdrawal limits for ATM and in cash:** On 1 March 2021, the CBM instructed banks and non-banking financial institutions, to issue:

   - MMK 500,000 in cash per day for ATM/POS;
   - MMK 2 million per week for the withdrawal of cash for individuals;
   - MMK 20 million in cash for companies or organizations;
   - Cash exceeding the prescribed amount for salaries/wages, allowances, and pensions for government departments and large enterprises upon their requirements and bank balance.

   On 28 July 2021, the CBM instructed the banks to issue MMK 2 million for individuals and MMK 20 million for companies and organizations in cash for purchasing medicines, oxygen, oxygen plans, and accessories used for COVID-19 treatments. However, in exceptional circumstances, the banks may issue cash exceeding the prescribed amount as per the balance with the bank.

   On 1 April 2022, the CBM allowed the banks to issue cash of up to MMK 100 million per week for the government departments and the factories. Individuals can withdraw up to MMK 10 million per week for health and religious matters.

3. **Withdrawal limits for international prepaid and credit cards**: On 7 October 2012 and 16 January 2017, the CBM instructed the banks to issue USD 5,000 for international prepaid cards and MMK 5 million for international credit cards. On 7 April 2022, CBM reduced the amount for international prepaid cards to USD 2,500 and MMK 2.5 million for international credit cards.

SWAP FACILITY

1. On 23 August 2018, the CBM issued detailed procedures relating to the bilateral USD/ MMK SWAP Facility. The authorized dealers licensed banks must comply with the reporting requirements to the CBM. The term of the SWAP Facility is 14 days and 30 days respectively. The authorized dealers and licensed banks that procured the SWAP Facility must keep confidential information relating to the SWAP agreement and the transaction.

2. On 6 July 2021, the CBM amended clauses (g) that mention the CBM will deposit the USD into the Nostro account of the relevant bank and deduct MMK from the relevant bank's MMK account. In special circumstances, the CBM may allow other equivalent assets in addition to MMK. Clause (j) amended the conditions of reporting requirements by submitting the following documents:

   (i) Foreign exchange position including Nostro account,

   (ii) Net open position chart,

   (iii) Foreign exchange receipts and payments,

   (iv) Capital adequacy ratio,

   (v) Reserve requirement ratio, and

   (vi) Liquidity ratio.

MINIMUM RESERVE REQUIREMENT FOR THE BANKS

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. Due to Covid-19, the minimum reserve requirement was temporarily reduced to 3.5% in 2020 and then 3% in 2021 respectively.

4. Initially, the calculation of minimum reserve was based on the total deposits of customers other than banks. However, to facilitate the monetary management of banks and for maintaining sufficient cash reserves in the banking system, the CBM temporarily adopted a new formula for the calculation of the minimum reserve requirement ratio on 25 November 2021. 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. The CBM extended the period for the temporarily revised reserve ratio and calculation formula until 31 March 2023 on March 25, 2022. As a result, the current ratio is 3% and will remain so until March 31, 2023.

6. If banks fail to comply with this revised minimum reserve requirement and calculation formula, they will be subject to penalties imposed by the CBM.

EXPORT OR IMPORT OF GOLD

1. The Ministry of Commerce ("**MOC**") on 22 January 2018 allowed Myanmar entrepreneurs to export and import gold, jewelry, works of art, and utilities made from gold using foreign currency as approved by the Central Bank of Myanmar under the Letter of Credit system ("**L/C system**") or the Telegraphic Transfer system ("**TT system**").

2. In 2020, Myanmar was placed in the grey list by the Financial Action Task Force (FATF). Accordingly, Myanmar needed to monitor exports and imports of gold and ensure there is no illegal income arising out of gold exports and imports. Consequently, the government only permitted the L/C system for payments and banned the TT system.

3. At the request of Yangon Region Gold Entrepreneurs Association to the MOC and CBM, the MOC and CBM were given the green light for TT system for the transactions valued below USD 50,000 while the transactions above USD 50,000 are permitted only on the L/C system.

If you have any questions or need assistance on any matter, please do not hesitate to contact us.

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.

DFDL IN MYANMAR

Founded in 1995, DFDL is one of the longest established foreign legal and tax firms in Myanmar.

DFDL provides a full range of legal and tax services to domestic, regional and international investors operating in Myanmar. Our team of professional lawyers and advisers in Yangon and Naypyidaw provides tailored, efficient and practical legal services at an international standard, grounded with longstanding knowledge and comprehensive expertise of the local business environment and future growth opportunities in various industries.

DFDL is best placed to advise Asian and international companies on their investments in Myanmar.

Our Myanmar business unit is led by Partner and Managing Director Nishant Choudhary.

AWARDS

2022 Chambers Asia Pacific
Winner of Mekong Region Firm of the Year 2020-2021 (2nd Year Running)
Band 1 – General Corporate Business Law

2022 Asialaw Rankings
Outstanding – General business law/Banking and Financial Services/Energy

2022 IFLR1000
Tier 1 – Financial and Corporate
Tier 1 – Project Development

2022 The Legal 500 Asia Pacific
Tier 1 – Corporate and M&A/Projects

2022 World Tax & World Transfer Pricing
Active – Tax

SERVICES

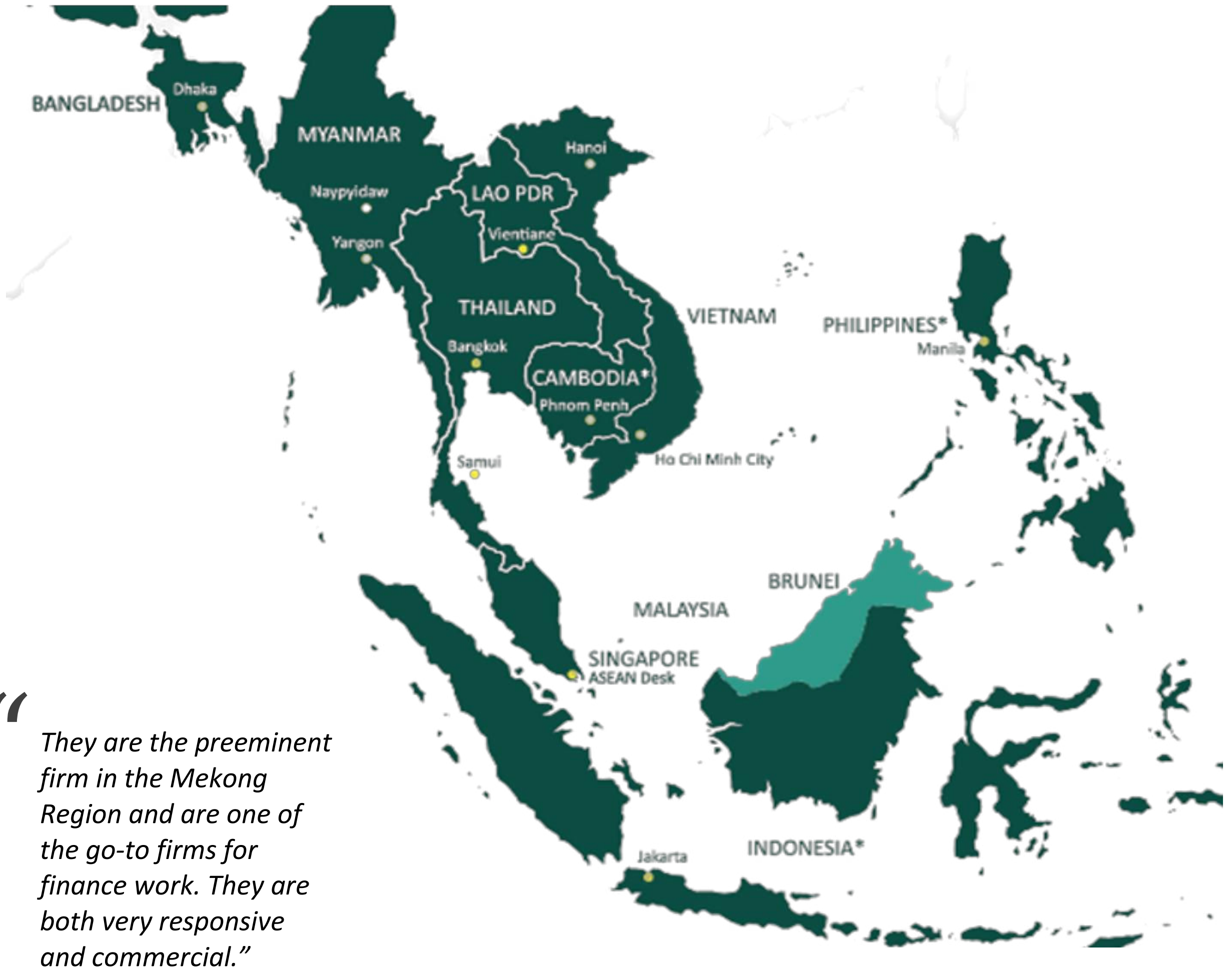
- Banking and Finance including Corporate Finance Project Finance, Securities and Investment Funds
- Business Integrity and Compliance
- Corporate and Commercial (including Insurance)
- Dispute Resolution
- Employment and Labor
- Energy, Mining and Infrastructure
- Real Estate and Construction
- Regulatory Assistance
- Project Development
- Taxation
- Technical Assistance
- Trademark search, registration and defense
- Trade and Customs Advice
- Translation
- Visa, Stay permit and FRC application assistance

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.

Within their fast-growing network of offices across Asia, the team of more than 300 foreign and local advisers and support staff work closely together to provide unique value propositions and innovative solutions to clients.

9 COUNTRIES | **10 PRACTICES** | **12 OFFICES** | **5 DESKS** | **170 ADVISERS**



“They are the preeminent firm in the Mekong Region and are one of the go-to firms for finance work. They are both very responsive and commercial.”

- Chambers Asia 2022

CONTACTS

Yangon

Address: № 134/A, Than Lwin Road, Golden Valley Ward (1) Bahan Township (GPO Box 729) Yangon Myanmar

E-mail: myanmar@dfdl.com

Telephone: +95 1 526 180

Fax: +95 1 525 180

Naypyidaw

Address: Plot No. 18, Ottarathiri Hotel, Hotel Zone (2), Oattarathiri Township, Nay Pyi Taw, Myanmar

Telephone: +95-67-435031; +95-67-435038

NISHANT CHOUDHARY
Partner & Managing Director,
Head of Regional Dispute
Resolution Practice
nishant.choudhary@dfdl.com

THIDA AYE
Partner
thida.aye@dfdl.com

WILLIAM D. GREENLEE, JR.
Partner
william.greenlee@dfdl.com

NICK TOWLE
Regional Senior Legal Adviser
nick.towle@dfdl.com

BHAWNA BAKSHI
Regional Legal Adviser,
ASEAN Desk
bhawna.bakshi@dfdl.com

ROHAN BISHAYEE
Legal Adviser
rohan.bishayee@dfdl.com

MAR MAR AUNG
Legal Adviser
marmar.aung@dfdl.com

EXCELLENCE · CREATIVITY · TRUST

Since 1994

BANGLADESH | CAMBODIA* | INDONESIA* | LAO PDR | MYANMAR | PHILIPPINES* | SINGAPORE | THAILAND | VIETNAM

[‡] DFDL collaborating firms