

July 2022

# MYANMAR

## Legal Updates



### Key Contacts



Julian Barendse

☎ +95-1-9253650

✉ julian.barendse@mhm-global.com



Nirmalan Amirthanesan

☎ +95-1-9253657

✉ nirmalan.amirthanesan@mhm-global.com



Sooksun Popun-Ngarm

☎ +95-1-9253659

✉ sooksun.popun-ngarm@mhm-global.com

In this edition of our newsletter, we provide the following legal updates:

- **Myanmar foreign exchange restrictions update** – an update on recent notifications and directives issued by the Central Bank of Myanmar (“**CBM**”) in relation to foreign exchange restrictions; and
- **Labour law updates** – an update of recent announcements by the Ministry of Labour (“**MOL**”) on guidelines for working overtime and shift work at factories and workshops.

## LEGAL UPDATES

### 1. RECENT MEASURES TAKEN BY THE CBM

In our [April newsletter](#), we provided an update on measures introduced by the CBM in relation to foreign currency held by residents of Myanmar (including CBM Directive No. 4/2022 and Notification No. 12/2022 in relation to the conversion of foreign currencies into Myanmar kyats and the requirement for Foreign Exchange Supervisory Committee approval for foreign currency remittances, and related Directive No. 5/2022 and Directive No. 6/2022). Please refer to our summary of these CBM instruments and their implications in our [April newsletter](#). We provide below recent updates in relation to foreign exchange restrictions.

#### (1) Request for suspension of repayments for offshore loans

On 13 July 2022, the CBM issued Letter No FE-1 / 744 (Ka) under which it has requested that Myanmar authorised dealer banks (“**AD Banks**”) notify customers who are borrowers under offshore loans to negotiate a suspension of the repayment of such loans (whether in cash or in-kind) including both principal repayments and interest under such loans.

At this time, the implications of this new request remain uncertain, in particular it is not clear what the consequences would be if a borrower is not able to reach a voluntary agreement with their offshore lender to suspend repayment and interest payment obligations under offshore loans. To the extent there would be any restriction on the remittance of such payments offshore where no voluntary suspension is agreed with an offshore lender, this latest CBM request will have significant implications for offshore lenders and borrowers, as well as the AD Banks subject to the notice.

As noted above, all foreign currency remittances from Myanmar (including for payments for goods and services, dividend distributions and loan repayments) require the approval of the Foreign Exchange Supervisory Committee under previously issued CBM directives.



Tony Grundy

+65-6593-9756 (Singapore)

tony.grundy@mhm-global.com



Takeshi Mukawa

+95-1-9253652

takeshi.mukawa@mhm-global.com



Kana Manabe

+95-1-9253653

kana.manabe@mhm-global.com



Atsushi Inoue

+95-1-9253653

atsushi.inoue@mhm-global.com

## (2) Compulsory conversion of foreign currency

As we noted in our [April newsletter](#), the CBM directives require that (in summary) AD Banks undertake the conversion of foreign currency amounts held in the accounts of Myanmar residents (other than Myanmar governmental entities) into Myanmar kyat within one business day at the fixed rate of one thousand eight hundred and fifty (1,850) Myanmar kyats per US dollar, except where an exemption applies.

### (a) Exemptions to the compulsory conversion requirement

In relation to the requirement to deposit foreign currency amounts at an AD Bank and to convert such amounts to Myanmar kyat, the CBM has announced various exemptions (as well as revoking an exemption, as referred to below).

- **(Exemptions from foreign currency conversion measures)** On 20 April 2022, the CBM issued Letter No. FE-1/69 announcing the following exemptions to Notification No. 12/2022 (in addition to the exemption given to bank accounts of the Myanmar Government or Union Ministries previously granted under Directive No. 5/2022):
  - foreign direct investments carried out with the permission of the Myanmar Investment Commission ("MIC") (we understand this refers to foreign direct investment for which an MIC permit, or potentially an MIC endorsement, has been granted);
  - investments conducted at special economic zones (eg, such as the Thilawa SEZ);
  - foreign diplomats from countries that have established diplomatic relations with Myanmar and opened embassies in Myanmar, and their families and foreign staff working at such embassies with a diplomatic status;
  - staff of the United Nations and its subsidiaries employed in Myanmar, and Myanmar citizens holding laissez-passer travel documents issued by the United Nations;
  - foreign staff of foreign development agencies working on aid projects in Myanmar;
  - foreign staff having diplomatic status from international organisations (eg, the International Committee of the Red Cross and International Labour Organisation), international non-governmental organisations and development agencies (eg, Thailand International Cooperation Agency and Japan International Cooperation Agency); and
  - Myanmar government-owned and Myanmar citizen-owned international airlines (ie, Myanmar Airways International and Myanmar National Airlines).
- **(Revoked exemption for DICA companies with 10% or more foreign investment)** On 16 June 2022, the CBM issued minutes of its meeting held with AD Banks on 7 June 2022 with respect to the implementation of Notification No. 12/2022 (a letter no. FE-1/540). The key decisions taken at the meeting include that companies registered with DICA and having foreign investment of 10% or more shall be exempted from Notification No. 12/2022. However, on 13 July 2022, the CBM issued a letter no. FE-1/739

removing the companies registered with DICA and having foreign investment of 10% or more from the exemptions to Notification No. 12/2022. Consequently, based on the information available to us as at the date of this newsletter, there is no general exemption for DICA registered companies having 10% or more foreign investment (and, as noted below, in relation to those Myanmar incorporated companies with foreign investment at 35% or less, the CBM has notified AD Banks to immediately undertake compulsory conversion of foreign currency to Myanmar kyat).

- **(Border trade exemption)** On 26 April 2022, the CBM issued Directive No. 7/2022 exempting businesses conducting trade at the Myanmar's borders with China and Thailand from Notification No. 12/2022. Despite the currency conversion requirement under Notification No. 12/2022, exporters subject to the exemption have one (1) month to deposit earnings from trade at Myanmar's borders with China and Thailand at AD Banks in Myanmar. Any unused amount of foreign currency export earnings after one (1) month are required to be sold to an AD Bank in Myanmar.
- **(Logistics sector permitted amounts)** On 2 June 2022, the Ministry of Transport and Communication issued a letter notifying a decision of the Foreign Exchange Supervisory Committee to permit businesses in the logistics sector to hold certain amounts of foreign currency (without being required to be converted into Myanmar kyat) according to prescribed limits set out below:
  - member companies of the Myanmar International Freight Forwarders' Association (MIFFA) are allowed to hold up to three hundred thousand (300,000) US dollars per month in their foreign currency accounts;
  - shipping line operators under the Myanmar Mercantile Marine Development Association are allowed to hold up to two million (2,000,000) US dollars in their foreign currency accounts; and
  - international air cargo service providers and international ground handling service providers are allowed to hold up to one hundred thousand (100,000) US dollars in their foreign currency accounts.

Any amounts of foreign currency exceeding the above permitted limits would have to be converted into Myanmar kyats in accordance with Notification No. 12/2022.

- **(Additional specific exemptions)** On 29 June 2022, the CBM issued Letter No. FE-1/643 to announce additional specific exemptions to Notification No. 12/2022 for the following entities:
  - foreign currency amounts held by Woori Bank Representative Office in its foreign account opened at Myanma Foreign Trade Bank;
  - foreign currency amounts held by Special Economic Zone Committees in their foreign currency accounts (eg, Thilawa Special Economic Zone Management Committee Co., Ltd., Kyaukphyu Special Economic Zone Development Co., Ltd., Kyaukphyu Special Economic Zone Deep Seaport Co., Ltd., and Dawei Special Economic Zone Management Committee Co., Ltd.);
  - Export-Import Bank of India;
  - China National United Oil Corporation (Myanmar Branch); and

- Punjab National Bank Yangon Representative Office.

**(b) Request for prompt conversion Myanmar kyat to Myanmar incorporated companies with foreign ownership up to 35%**

On 15 July 2022, the CBM issued Letter No. FE – 1 / 754 to inform AD Banks of a determination of Meeting No 32 / 2022 of the Foreign Exchange Supervisory Committee to require that the compulsory conversion of foreign currency held by Myanmar incorporated companies with foreign ownership up to 35% should be undertaken as soon as possible. Under the letter, AD Banks are requested to:

- provide a list of Myanmar incorporated companies with foreign ownership up to 35% (which are maintaining foreign currency bank account(s) at the respective AD Bank);
- provide a report of the foreign currency balance of such companies by 15 July 2022; and
- process the conversion of foreign currency from such companies to Myanmar kyat by 18 July 2022.

We note that this action could be expected to have significant implications in relation to any such companies which have foreign currency obligations, including offshore loan repayment and interest payment obligations.

We also note that this letter does not provide any express exemptions to companies with foreign ownership above 35%, and the status of implementation for the CBM directives to undertake compulsory conversion of foreign currency from such companies (where no exemption applies) remains unclear. Please see sub-item (a) above regarding the current status of exemptions from the compulsory conversion requirement.

**(3) Prohibition on the use of foreign currency for local payments**

The CBM has issued a letter dated 25 May 2022 requiring the Union Ministries, Regional and State Governments and the Nay Pyi Taw, Yangon and Mandalay City Development Committees to use only Myanmar kyats for domestic settlements and to issue necessary directives to their subordinate organisations to use only Myanmar kyats.

We also note that under the CBM's Letter No. FE-1/PaKa/194 dated 29 April 2022, the CBM notified AD Banks that transfers from a foreign currency account to another foreign currency by AD Banks within Myanmar are not permitted. This prohibition also applies to entities which are exempted from the compulsory conversion requirement under Notification No. 12/2022. Consequently, our understanding is that it is currently not generally possible (under the CBM announced restrictions) to undertake settlements of foreign currency transactions within Myanmar (other than potentially certain own-account transactions and settlements with government ministries, although noting the above request of the CBM for government agencies to use only Myanmar kyats).

**(4) Foreign export earnings**

On 6 May 2022, the CBM issued Notification No. 27/2022 to notify exporters to deposit their foreign currency denominated export earnings in their bank accounts within forty five (45) days (in the case of exports to Asian countries), and within ninety (90) days (in the case of exports to non-Asian countries), from the date of

shipment of goods. Prior to this Notification No. 27/2022, exporters were required to deposit their foreign currency denominated export earnings into their bank accounts within three (3) months from the date of the shipment of goods pursuant to Notification No. 46/2021.

The CBM also announced a list of one hundred and fifty eight (158) companies that failed to deposit their export earnings into their bank accounts within the stipulated period on 9 May 2022. It announced a list of one hundred thirty seven (137) companies that had failed to deposit their export earnings within the stipulated period on 3 June 2022. The CBM has announced that non-compliant companies are being prosecuted under section 42(a) of the Foreign Exchange Management Law, and that the boards of directors of these companies have also been blacklisted by the CBM.

#### **(5) Formation of the Foreign Exchange Supervisory Committee**

As referred to above, foreign currency remittances from Myanmar are generally subject to approval from the Foreign Exchange Supervisory Committee. The State Administrative Council (“SAC”) formed the Foreign Exchange Supervisory Committee under Order No. 28/2022 on 4 April 2022. The stated purposes of the Committee were to implement the necessary tasks for the stability of foreign exchange rates with the aim of the economic development of Myanmar.

The Committee is chaired by Lt. Gen Moe Myint Tun, a member of the SAC. U Aung Naing Oo, the Union Minister for Investment and Foreign Economic Relation is the Secretary of the Committee. The Committee includes a further four (4) members, including U Than Nyein, Governor of the CBM.

## **2. LABOUR LAW UPDATE**

The MOL has issued new guidelines for working overtime and shift work at factories and workshops. The guideline on overtime work provides that a factory must obtain permission for any overtime work from the applicable township, district, industrial zone or regional or state office of the Factory and General Labour Laws Department office of the MOL, depending on the number of its employees, with the application to be made 7 days prior to the overtime (a requirement for prior permission had also applied prior to the issue of these guidelines). The guidelines also set out certain requirements for overtime work, such as guidance that an employee may work up to forty eight (48) hours per week in particular prescribed industries (such as electric power supply businesses) and otherwise up to forty four (44) hours before they are considered to be working overtime. Notably, this guidance goes beyond section 59 of the Factories Act 1951, which permitted up to forty eight (48) hours of work per week for any technical work that must be continuously undertaken throughout the day (without limitation by industry). In addition, the guidelines make reference to additional limitations on overtime periods on factories and workshops, with:

- non-continuous operating factories being limited to three (3) hours of overtime per employee per day from Monday to Friday and five (5) hours of overtime on Saturday (or twenty (20) hours per week); and
- continuous operating factories being limited to two (2) hours and forty (40) minutes per employee per day from Monday to Saturday (or sixteen (16) hours per week).

The guidelines on shift work set out the information with respect to shift workers which businesses must submit to the MOL (such as a guarantee to comply with the

guidelines) and the terms and conditions for employing shift workers.

The information provided in this newsletter is summary in nature and does not purport to be comprehensive or to render legal advice. Please contact our lawyers or email us at [mhm\\_ygn\\_info@mhm-global.com](mailto:mhm_ygn_info@mhm-global.com) if you would like to obtain advice about specific situations.

## Contact Us

Myanmar Legal MHM Limited  
Level 16, #16-01/02  
Junction City Tower  
No. 3A, Bogyoke Aung San Road  
Pabedan Township, Yangon, Myanmar  
[www.mhmjapan.com](http://www.mhmjapan.com)

The information provided in this newsletter is summary in nature and does not purport to be comprehensive or to render legal advice. Please contact our lawyers or email us at [mhm\\_ygn\\_info@mhm-global.com](mailto:mhm_ygn_info@mhm-global.com) if you would like to obtain advice about specific situations.