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# 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 a legal update on **recent measures taken by the Central Bank of Myanmar ("CBM")** regarding foreign currency held by residents of Myanmar.

### Updated on recent measures taken by CBM

The CBM has issued a number of new instruments regarding foreign currency held by Myanmar residents ("**CBM Instruments**"). The key instruments are Notification No. 12/2022 and Directive No. 4/2022 each dated 3 April 2022 and Directive No. 5/2022 and Directive No. 6/2022 each dated 5 April 2022.

The CBM Instruments aim to address recent shortages of foreign currencies in Myanmar and the depreciation of the Myanmar kyat over 2021 in particular. The new measures should be carefully considered by foreign investors in Myanmar given the significant repercussions of the changes.

We provide below a summary of the CBM Instruments and their implications.

#### 1. Summary of the CBM Instruments

Under the CBM Instruments:

- (i) From 4 April 2022, Myanmar residents (other than Myanmar government entities) must deposit certain foreign currency amounts in an account at a Myanmar authorised dealer bank ("**AD Bank**") and convert such amounts to Myanmar kyats within one (1) business day at the fixed rate of 1,850 Myanmar kyats per US dollar (the current reference exchange rate of the CBM for the conversion of kyats to US dollars). The foreign currency amounts which are subject to this requirement are:
  - a) all earnings in a foreign currency (including export earnings and earnings from services);
  - b) capital income and borrowings denominated in a foreign currency (unless permission is obtained from the Foreign Exchange Supervisory Committee to not convert these amounts into kyats); and
  - c) unilateral transfers in a foreign currency (including gifts).



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

+95-1-9253654

atsushi.inoue@mhm-global.com

This represents a significant broadening of the previous requirement for exporters only to deposit foreign incomes into a bank account in Myanmar. The mandatory conversion of foreign currency-denominated borrowings and capital is likely to have a serious impact on business in Myanmar.

- (ii) Foreign currency amounts held by Myanmar residents (other than Myanmar government entities) in Myanmar AD Banks prior to 3 April 2022 would also be subject to the measure described in paragraph (i) above (in accordance with further details to be prescribed by the CBM).
- (iii) All foreign currency remittances from Myanmar (including payments for goods and services, dividend distributions and loan repayments) are subject to the prior approval of the Foreign Exchange Supervisory Committee. This introduces a new and significant regulatory requirement for companies in Myanmar. Previously, under Chapter VIII of the Foreign Exchange Management Law (Law No. 12/2012) ("FEML") "ordinary account transactions" (defined in the FEML to include short term bank loans and payments for goods and services, interest repayments, payments relating to amortisations of loans and depreciations of direct investments and money transfers for costs of living) could be made without restriction. However, under the CBM Instruments, ordinary account transactions require approval from the Foreign Exchange Supervisory Committee.

## 2. Status of implementation of the CBM Instruments

While the CBM Instruments are expressed to be implemented from 4 April 2022, the current status of implementation is not clear. We understand that AD Banks in Myanmar have expressed a number of concerns regarding their ability to implement the CBM Instruments, and the CBM has been conducting consultation sessions with AD Banks to assist in implementation.

We understand that foreign currencies held by some individuals (including foreign nationals) at AD Banks may have been mandatorily converted to kyats. Residents in Myanmar should therefore consider expressly requiring AD Banks at which they hold accounts to not undertake any such conversion (under the terms of their customer agreement with the AD Bank) until the operation of the CBM Instruments is clarified.

## 3. Major issues with the CBM Instruments

We set out below our understanding in relation to major issues arising in relation to the CBM Instruments (while noting that the operation of the CBM Instruments is not yet clear).

- **What foreign currencies are subject to conversion to kyats under the CBM Instruments?**

Directive No. 4/2022 of the CBM provides that from 4 April 2022, foreign currency amounts remitted to Myanmar from abroad are required to be converted to Myanmar kyats. However, it is not yet clear if or to what extent the CBM intends for foreign currency amounts already in Myanmar to also be converted to kyats.

If the CBM takes the approach that foreign currency previously brought into Myanmar must also be converted to Myanmar kyats, then it will compound the impact on businesses in Myanmar, particularly businesses which need to make foreign currency payments (including for imports and repayments of foreign currency denominated borrowings). Such a move would also be inconsistent with previous approvals for offshore loans obtained from the CBM under the FEML.

- **Will transactions denominated in foreign currencies be prohibited in Myanmar in future?**

There is currently no prohibition of foreign currency denominated transactions in Myanmar. On the contrary, the Myanmar Companies Law (Law No. 29/2017) introduced a right for Myanmar companies to determine the currency in which their capital would be denominated, providing greater flexibility for companies to manage their foreign currency exposure.

It is possible however that depending on the manner in which the CBM Instruments are implemented, a de facto restriction on foreign currency payments may occur, as companies in Myanmar may not be able to source foreign currencies to make payments. This could lead to a potential further adverse impact on trade and investment flows to Myanmar.

- **Could the CBM Instruments lead to greater circulation of foreign currency, permitting remittances abroad in foreign currencies where required?**

Further clarification regarding the proposed usage of the mandatorily converted foreign currency is required to assess the impact regarding the availability of foreign currency in Myanmar. We understand such foreign currency may be managed by CBM and its policy in relation to use of such foreign currency is not yet known.

- **What impact do the CBM Instruments have on parent company loans?**

Parent company loans in foreign currency would also be subject to the requirements of the CBM Instruments. Under the CBM Instruments, the exemption by the Foreign Exchange Supervisory Committee is required in order for the proceeds of such loans to be held in foreign currency (without being converted to Myanmar kyat).

- **What are the implications for offshore loans which were already approved under the FEML?**

Offshore loans are "capital account transactions" within the meaning of the FEML and require the approval of the CBM under Chapter IX of the FEML prior to the relevant disbursement to Myanmar. To date, borrowers in Myanmar have been entitled to repay offshore loans which were approved by the CBM under the FEML.

Despite the previous approvals given by CBM for offshore loans, it appears that under the CBM Instruments, a further approval of the Foreign Exchange Supervisory Committee is required in order to make repayments under loans that were already previously approved under the FEML. The effect of this further requirement will depend on how the approval is implemented in practice.

For example, if approval of the Foreign Exchange Supervisory Committee is provided as a matter of course under the CBM Instruments for loans which had previously been approved under the FEML, it is possible this new requirement may not significantly impact existing financing arrangements.

#### 4. Summary

The CBM Instruments represent the latest move by the CBM in relation to Myanmar's foreign currency reserves. While the implications (and objectives) of the CBM Instruments are not yet entirely clear, there is a significant potential for these measures to have a significant adverse impact on businesses, and to result in inconsistencies with existing governmental approvals for foreign currency transactions (such as offshore loans approved by the CBM under the FEML) in Myanmar.

Businesses should therefore consider the implications of this measure for their operations and options available to them to address risks, particularly where they have foreign currency exposure, such as under offshore loans (including considering seeking approval from the Foreign Exchange Supervisory Committee under the CBM Instruments).

The CBM Instruments have been the subject of considerable attention by businesses (and chambers of commerce) in Myanmar, including under a joint statement dated 8 April 2022 by a number of chambers of commerce (among them, the Japan Chamber of Commerce and Industry, and the American, British, European and Australian Chambers of Commerce in Myanmar). The Thai Business Association of Myanmar wrote separately to the CBM to express its concerns on 11 April 2022.

## 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)