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MYANMAR

Legal Updates



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

- **FATF call to action** – we provide an update on the recent call to action classification (aka, 'blacklisting') applied to Myanmar by the Financial Action Task Force ("FATF");
- **Myanmar foreign exchange restrictions update** – we provide an update on recent notifications and directives issued by the Central Bank of Myanmar ("CBM") relating to foreign exchange;
- **Insolvency update** – we provide a summary of a recent update from the Directorate of Investment and Company Administration ("DICA") in relation to the implementation of the Insolvency Law (Law No. 1/2020); and
- **Import and export update** – updates in relation to import and export matters.

LEGAL UPDATES

1. FATF CALL TO ACTION

At the Plenary Meeting of the Financial Action Task Force, held in Paris on 21 October 2022, the FATF added Myanmar to the list of jurisdictions which are subject to a 'Call for Action' (known generally as its 'blacklist'). The FATF noted that Myanmar's failure to complete its action plan to address strategic deficiencies in relation to anti-money laundering and counter-terrorism financing by October 2022 has resulted in Myanmar being added to the Call for Action list.

The FATF has called on its members and urged all jurisdictions to apply enhanced due diligence to business relations and transactions with Myanmar, which should be proportionate to the risk arising from Myanmar. In applying such measures, the FATF has noted that countries should ensure that funds for humanitarian assistance, legitimate non-for-profit organization activities and remittances are not disrupted. These would include measures such as obtaining additional information on customers, obtaining information on the source of funds and source of wealth of customers, and enhancing monitoring of business relationships.

As a result of these measures, it can be expected that there may be additional complexity and time required for payments and finance involving Myanmar or Myanmar citizens or companies.

We note that the Call for Action by FATF does not include a call for 'countermeasures', being the stricter measures which apply to the other jurisdictions on the Call for Action list (being the Democratic People's Republic of Korea and Iran); these measures generally seek to limit financial transactions and business relationships with those jurisdictions.

2. MYANMAR FOREIGN EXCHANGE RESTRICTIONS UPDATE

(1) Compulsory conversion of foreign currency

In our [April 2022](#) and [July 2022](#) newsletters, 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 approval from the newly established Foreign Exchange Supervisory Committee ("FESC") for cross-border foreign currency remittances). Please refer to our summary of these CBM instruments in our [April 2022](#) and [July 2022](#) newsletters.

We provide below recent updates in relation to foreign exchange restrictions. The intention of the measures described below appears to be incentivise remittances of foreign currency to Myanmar by liberalising some of the restrictions on the use of foreign currency. However, it remains to be seen whether it will in practice result in further foreign currency flows to Myanmar, particularly considering that except in the case of entities exempted from the requirement to convert foreign currency to kyats under Notification No. 12/2022, the liberalisations described below are for limited periods of time only. In addition, the requirement for FESC approval to undertake cross-border payments in a foreign currency provide a significant limitation on the ability of those holding foreign currencies to utilise such foreign currency within applicable time limitations.

- **(Foreign currency earnings of exporters)** On 5 August 2022, the CBM published Notification No. 36/2022 requiring exporters to convert sixty five (65) per cent of their export earnings to kyats. The CBM issued Letter No. FE-1/PaKa/1848 on 10 August 2022 to implement this Notification. That letter was subsequently repealed and replaced on 16 August 2022 by Letter No: FE-1/PaKa/1956. Under these instruments, AD Banks are required to convert sixty five (65) per cent of the export earnings of exporters into kyats within one (1) business day of receipt of the proceeds in Myanmar. Exporters are permitted to use the remaining thirty five (35) per cent of the proceeds for their own purposes. Recipients of the foreign currency may use it for their own purposes or convert it to kyats at an AD Bank. All transactions involving such foreign currency by the exporter or third party purchasers of the foreign currency need to be completed within thirty (30) days from receipt of the foreign currency in Myanmar, after which the balance would be converted to kyats by the AD Banks at which they are held. Letter No: FE-1/PaKa/1956 clarifies that insofar as any cross-border payments are made using foreign currency by an exporter or any third parties to whom it transferred foreign currency, such payments require approval from the FESC.
- **(Foreign income of Myanmar residents and citizens)** The CBM has introduced two new requirements in relation to foreign currency received by local residents in Myanmar:
 - Under Letter No. FE – 1/PaKa/1957 of the CBM dated 16 August 2022, income received from abroad in a foreign currency by Myanmar resident entities who are exempted from the obligation to convert foreign currency held by them into kyats under Notification No. 12/2022, including any



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company with MIC permit or operating in Thilawa SEZ, are permitted to use such foreign currency for their own purposes, sell the foreign currency to third parties (who may use it for their own purposes or convert it to kyats at an AD Bank within thirty (30) days, after which the balance would be converted to kyats by the AD Banks at which they are held) or convert it to kyats at an AD Bank. The foreign currency may be used for cross-border payments by the local resident who originally received it or any third parties to whom it was sold with the approval of the FESC.

- Under Notification No. 39/2022 of the CBM dated 30 August 2022, Myanmar citizens who receive wages or salaries in a foreign currency overseas and remit such wages or salaries to Myanmar via AD Banks are permitted to use such foreign currency for their own purposes, sell the foreign currency to third parties or convert it to kyats at an AD Bank. The balance of the foreign currency after twenty (21) days after the date on which it was remitted to Myanmar (whether held by the person who originally remitted the money to Myanmar or a purchaser) would be converted to kyats by the AD Banks at which they are held.

(2) New reference exchange rate and the cap on the spread for trading foreign currencies

The CBM issued a notice on 6 August 2022 changing its reference exchange rate for the conversion of US dollars to kyats from one thousand, eight hundred and fifty (1,850) kyats per US dollar to two thousand, one hundred (2,100) kyats per US dollar.

The CBM subsequently issued Directive No. 11/2022 dated 10 August 2022 to require AD Banks and licensed money changers to conduct all foreign exchange transactions within a trading band of three tenths (0.3) of a per cent of the CBM's published reference exchange rates for foreign currency conversions. Previously, on 10 November 2021, the CBM had issued Directive No. 18/2021 requiring AD Banks and licensed money changers to conduct foreign exchange transactions within five tenths (0.5) of a per cent of the CBM's published exchange rates (for further information, please refer to item 5(2) of our [February 2022 newsletter](#)).

3. SANCTIONS UPDATE

The sanctions applied by the European Union, United States Treasury's Office of Foreign Assets Control ("OFAC") and United Kingdom in relation to Myanmar have been further expanded.

On 8 November 2022, the European Union sanctioned nineteen individuals (including Tay Za, previously sanctioned by the OFAC on 31 January 2022 and the United Kingdom on 2 September 2021 and Aung Moe Myint who was subject to sanctions by the OFAC on 6 October 2022 as described below, as well as senior officials involved in the administration of justice and Myanmar's prison system such as the Chief Justice of Myanmar's Supreme Court, Htun Htun Oo, previously sanctioned by the OFAC on 31 January 2022, and military commanders such as the chief of Myanmar's air force, General Htun Aung, previously sanctioned by the United Kingdom on 25 March 2022). The European Union also sanctioned the State Administration Council, which has also previously been sanctioned by the OFAC on 17 May 2021.

On 8 November 2022, the OFAC also expanded its list of Specifically Designated Nationals and Blocked Persons who are sanctioned under Executive Order 14014

titled Blocking Property with Respect to The Situation in Burma of 10 February 2021 to include Kyaw Min Oo and his company Sky Aviator Company Limited, which are alleged to have facilitated arms deals. Previously, on 6 October 2022, the OFAC sanctioned three individuals (Aung Moe Myint, and his affiliates, Hlaing Moe Myint and Myo Thitsar) and a company (Dynasty International Company Limited, founded by Aung Moe Myint). Aung Moe Myint and Dynasty International Company Limited had already been sanctioned by the United Kingdom. The sanctions were announced to be targeting businesses involved in procurement of weapons for the Myanmar military.

On 24 August 2024, the United Kingdom's HM Treasury sanctioned International Gateway Group of Companies Limited, Sky One Construction Company Limited and Star Sapphire Group of Companies under the Myanmar (Sanctions) Regulations 2021, made under the Sanctions and Anti-Money Laundering Act 2018. The sanctions were announced to be targeting military-linked businesses and marked the fifth anniversary of Myanmar military's operations in Rakhine State in 2017. International Gateway Group of Companies Limited and Sky One Construction Company Limited had already been sanctioned by the OFAC.

4. INSOLVENCY UPDATE

On 29 August 2022, the DICA published Form W-01 (Notice of appointment of liquidator for company/body corporate) and Form W-09 (Liquidator's final account of winding up of a company/body corporate). The release of these forms introduces a process relevant for implementing the Insolvency Law (Law No. 1/2020). However, as noted in item 6 of our [August 2021](#) newsletter, registration of insolvency practitioners by the Myanmar Insolvency Practitioners' Regulatory Council and registration of certified insolvency practitioners through the DICA is required for the implementation of the Insolvency Law, and this remains pending. Unless such registrations occur, legal procedures under the Insolvency Law requiring an insolvency practitioner (such as the appointment of rehabilitation manager or a liquidator) are not able to be undertaken. It remains unclear when these registrations will occur such that the Insolvency Law can be implemented.

5. IMPORT AND EXPORT UPDATE

There have been a number of updates relevant to trading businesses in Myanmar, including:

- On 31 August 2022, the Myanmar Ministry of Commerce ("**MOC**") announced that companies importing pharmaceutical products and medical accessories do not require any approval from the Myanmar Pharmaceuticals and Medical Equipment Entrepreneurs Association or the Myanmar Ministry of Health prior to applying for an import permit, from 31 August 2022.
- Under the Export Import Newsletter of the MOC dated 31 August 2022, certain agricultural machinery will be exempted from the requirement to obtain import licences, including trailers, semi-trailers and similar vehicles.
- The CBM has issued Letter No.: MaBaBa/NaPaTa/SaYin (626/2022) dated 28 July 2022 to inform banks which have been authorised by the CBM to facilitate payments in Chinese yuan and Thai baht as part of China-Myanmar and Thailand-Myanmar border trade that the FESC has determined that payments for exports of pea, corn, sesame and ground-nut must be made in advance of export by telegraphic transfer.

FIRM UPDATE – PUBLICATION OF ARTICLE ON PRIVATE M&A IN MYANMAR

Myanmar Legal MHM contributed the Myanmar chapter of the 2023 edition of the Getting the Deal Through volume on Private M&A in Myanmar.

We trust this publication will be helpful to your business in Myanmar. You can access this publication at the link [HERE](#).

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 if you would like to obtain advice about specific situations.

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