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**CORPORATE BRIEFING FOR MEMBERS  
BY LUTHER LAW FIRM ON**

# BANKING AND FINANCE 2023

Date : 17.Jan.2023

Time : 2:00pm-3:30pm MMT

Format : Hybrid (online & in person)

Venue : Pan Pacific Hotel Yangon

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# Corporate Briefing on Banking and Finance 2023

Pan Pacific Hotel Yangon, 17 January 2023

# Agenda

- Introduction
- Foreign Exchange Directives by the Central Bank of Myanmar
- FAFT blacklisting
- Other Updates
  - Visa and Stay Permits
  - Public ruling on tax evasion
- Q&A

# About Luther

Luther stands for expertise and dedication. With enthusiasm for our profession and the matter at hand, we work out precise answers to your questions. We provide our clients with the best possible solution. Not too much and not too little – our advice always hits the mark.

We are aware of the importance of using resources efficiently and giving priority to sustainable and forward-looking planning. Therefore, we always keep an eye on the economic and financial effects of our advice. This applies both to controversial disputes as well as to structuring advice.

**Lawyers and tax advisors**

**420**

**Locations**

**21**

**Long-standing  
connections to commercial  
law firms worldwide**



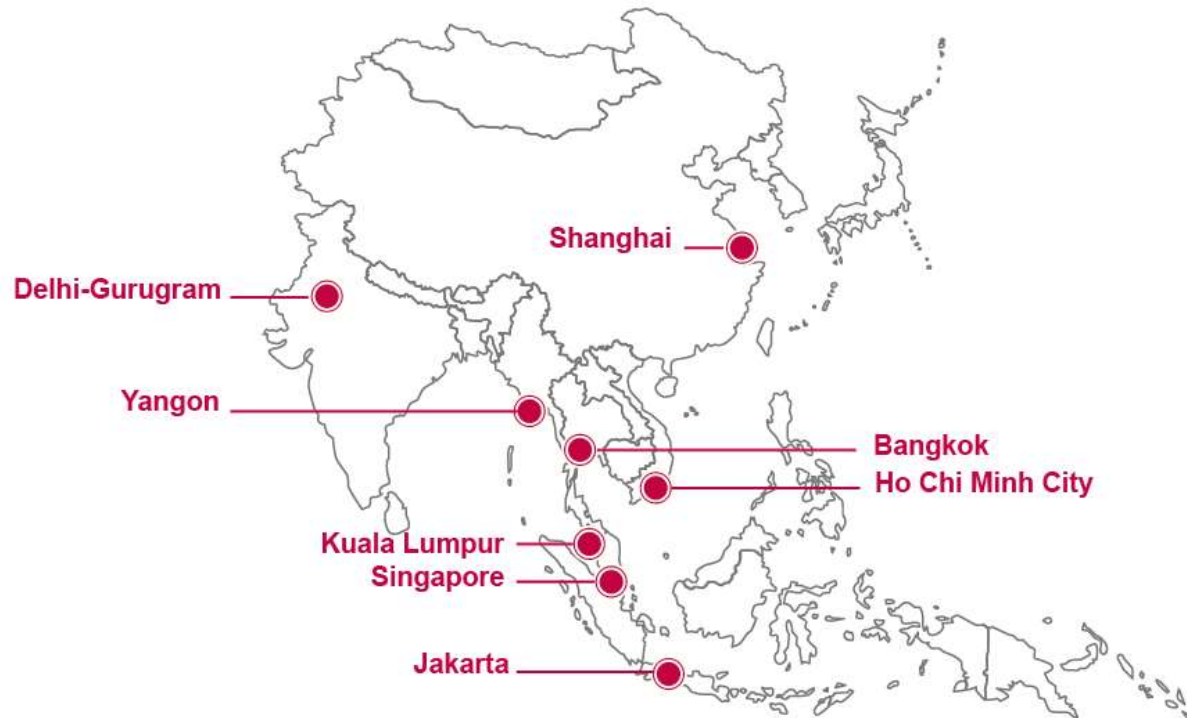
**Offices in international  
financial centres and  
investment locations**



# Our locations

We are a European law firm with offices in key economic and financial centres in Europe and Asia and a founding member of *unyer*, a global organisation of leading international law and legal tech firms.

In addition, we maintain close relationships with leading corporate law firms worldwide to ensure a seamless service for our clients throughout their demanding international projects



## Our locations

### Europe

- Berlin
- Brussels
- Cologne
- Dusseldorf
- Essen
- Frankfurt a. M.
- Hamburg
- Hanover
- Leipzig
- London
- Luxembourg
- Munich
- Stuttgart

### Asia

- Bangkok
- Delhi-Gurugram
- Ho Chi Minh City
- Jakarta
- Kuala Lumpur
- Shanghai
- Singapore
- Yangon

# Our services in Myanmar

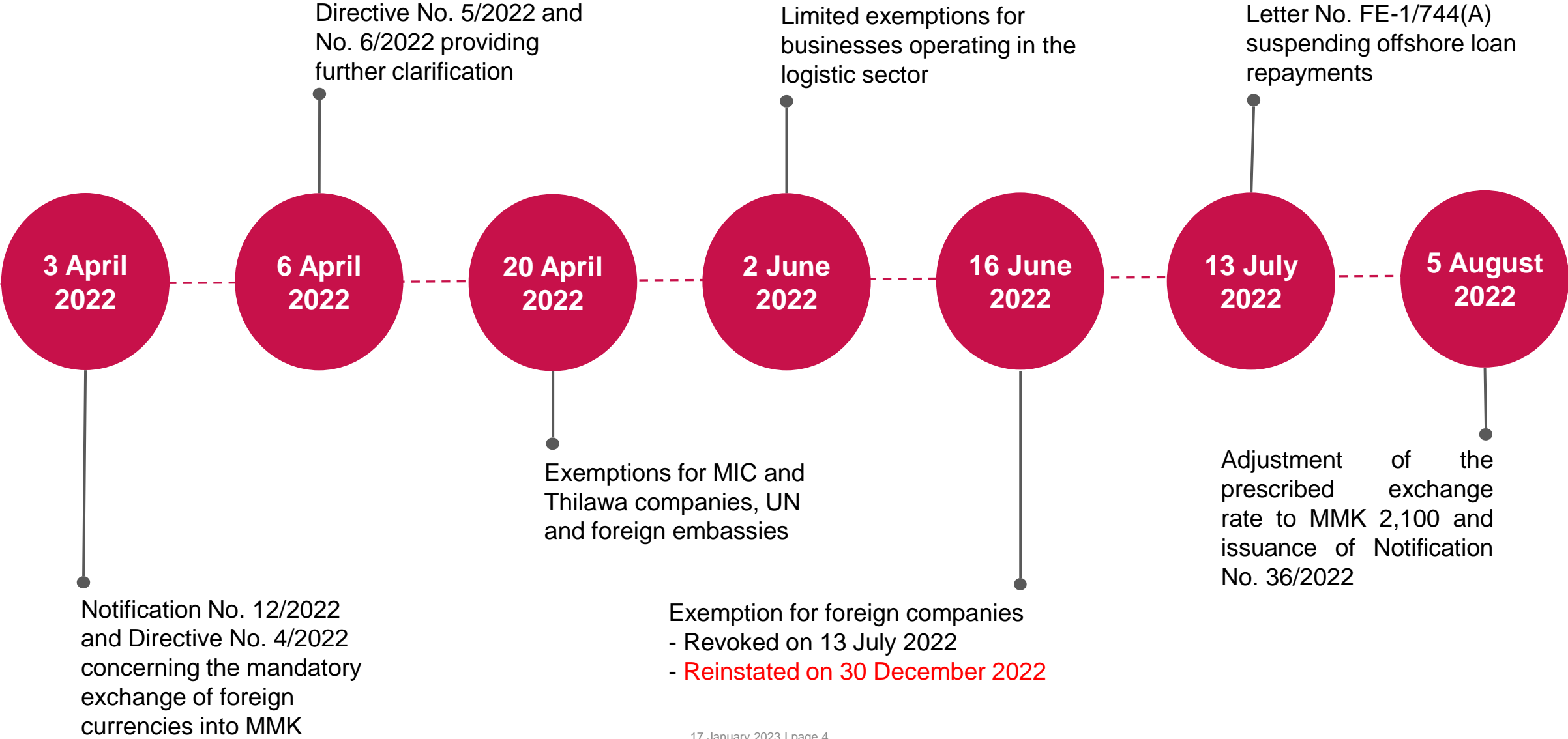
Our services include:

- Comprehensive legal, regulatory and tax advice
- Registration of entities and structuring of investments into Myanmar
- Advice on M&A and finance transactions, including asset and share deals, offshore, convertible and hybrid financing, as well as legal due diligence and post-completion support
- Corporate secretarial, accounting, payroll and tax compliance services



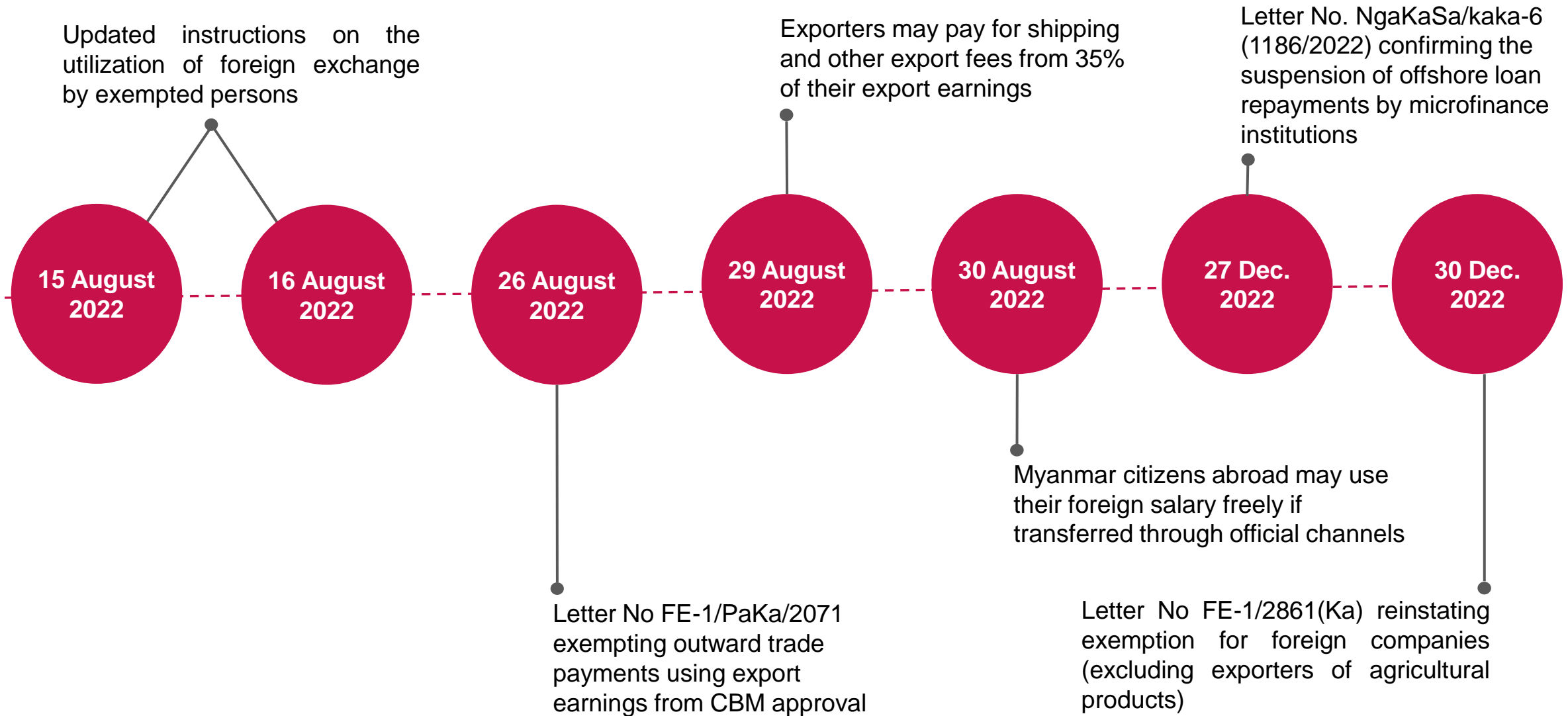
# I. Foreign Exchange Directives

# CBM forex restrictions – Timeline (1)





# CBM forex restrictions – Timeline (2)



# Rationale behind the forex restrictions



Reduce over-reliance on US Dollar



Artificially strengthen the Myanmar Kyat



Promote a policy of import substitution to promote domestic industries and limit imports to essential goods



Increase/preserve the amount of foreign exchange reserves to reduce impact of liquidity crisis and allow for government debt payments, as well as essential imports

# Notification No. 12/2022 and Directive No. 4/2022

Both CBM announcements essentially contain the same regulatory content, requiring banks holding an authorized foreign exchange dealer license (“AD Banks”) to convert all foreign exchange received from overseas sources into Myanmar Kyat within one working day.

Pursuant to Directive No. 4/2022, the prescribed exchange rate for the conversion was fixed at MMK 1,850 for USD 1.00. On 5 August 2022, the Central Bank announced that the reference exchange rate changed from 1,850 to 2,100 kyat as the national currency continues to weaken.

Further, any transfer of foreign currency from Myanmar to abroad requires the prior from the Foreign Exchange Supervisory Committee (FESC). Such approval must be obtained by the account holder and submitted to the commercial bank facilitating the transfer together with other supporting documents.

# Directives No. 5/2022 and No. 6/2022

On 6 April 2022, the CBM published Directives No. 5/2022 and No. 6/2022 providing for updated instructions on the exchange of foreign exchange into MMK.

While Directive No. 5/2022 stipulates that the bank accounts of Union Ministries are exempted from Notification No. 12/2022, Directive 6/2022 clarified that the mandatory conversion applies to the following transactions:

- Export and service earnings received in foreign exchange;
- Overseas foreign direct investments and loans for foreign directive investment, unless they are pre-approved and included in exemptions issued by the Foreign Currency Management Committee; and
- Remittance to recipients abroad will be assessed by the Foreign Currency Management Committee in accordance with the Foreign Exchange Management Law 2012 and Foreign Exchange Management Regulations 2014

# Notification No. 12/2022

On 20 April 2022, the CBM published Notification No 12/2022 announcing the exemptions from the exchange requirement for:

- (i) Foreign Direct Investments approved by the Myanmar investment Commission;
- (ii) Businesses invested and operating in Special Economic Zones;
- (iii) Foreign diplomats and their family members;
- (iii) Staff of the United Nations and its Agencies;
- (iv) Foreign staff of foreign Development Agencies working in aid projects in the Union of Myanmar;
- (v) Foreign staff of diplomatic rank working for international organizations (such as the International Committee of the Red Cross, International Labour Organization, INGO and Development Agencies (such as TICA, JICA);
- (vi) State-owned/citizen-owned international airlines.

# Meeting of the Central Bank with AD Banks

On 7 June 2022, the Central Bank held a meeting with banking officials discussing exemptions for foreign-owned companies from the mandatory exchange of foreign currency.

On 16 June 2022, the Central Bank released the minutes of this meeting. According to the minutes, companies with 10% or more foreign shareholding as well as branch offices of overseas corporations registered with DICA are to be exempted from the compulsory exchange requirement.

On 13 July 2022, the Central Bank issued Letter No. FE/744 (Ka) revoking the aforementioned exemption for foreign companies. This was shortly followed by Letter No. FE-1/754, in which the Central Bank instructed AD Banks to convert foreign currency held by Myanmar companies with up to 35% foreign ownership into Myanmar Kyat. This mandatory exchange was subsequently enforced for most foreign companies, irrespective of the shareholding (unless exempted under Notification 12/2022).

Please note the latest update dated 30 December 2022.

# Letter No. FE-1/744(A) on the suspension of offshore loan repayment

On 13 July 2022, the Central Bank instructed AD Banks to inform their customers that the repayment of offshore loans by residents to overseas lenders shall be suspended with immediate effect, which includes the repayment of the principal loan amount and/or accrued interest. Borrowers are to renegotiate the repayment terms of their loans with the overseas lenders.

Pursuant to sec. 2 (e) of the Foreign Exchange Management Law 2012, “resident” includes the following:

- Individuals who have resided or have had their main establishments in the Union for a period of at least one hundred eighty-three (183) days during the preceding twelve-month period, with the exception of diplomatic servant from foreign countries and foreign civil servants who carry out similar assignments;
- Companies, organizations and offices formed legally under any domestic law and companies, organizations, offices and branches formed legally in the Union under any foreign law; and
- Diplomatic servants or other servants appointed by the Union in foreign countries.

On 27 December 2022, the Ministry of Planning and Finance issued Letter No. NgaKaSa/kaka-6 (1186/2022), confirming that the suspension also applies to microfinance institutions. The letter notes that FESC shall approve interest payments while borrowers negotiate the postponement of repayment with the lenders.

# Adjusted exchange rate and Notification 36/2022

On 5 August 2022, the Central Bank adjusted the official reference exchange rates from MMK 1,850 to MMK 2,100 for USD 1.00.

In addition, the Central Bank issued Notification No. 36/2022 concerning export companies, instructing that “only” 65% of income received from export sales have to be converted into MMK within one day. The remaining 35% of export earnings balance will be converted into MMK unless utilized by the exporters within 30 days.

Subsequently, a similar exchange requirement was adopted (but never formally published) for CMP companies, irrespective of whether they are exempted under Notification 12/2022 or not.



# Letter No. FE-1/Paka/1936

On 15 August 2022, the Central Bank issued a new letter, instructing the banks that exempted entities and persons may utilize their foreign exchange for their own purposes, or sale to other persons or banks, without having to obtain separate approval from the Foreign Exchange Supervisory Committee.

Entities and persons that have purchased foreign exchange from exempted entities may utilize such foreign exchange within 30 days for their own purposes or for sale to banks without having to obtain separate approval from the Foreign Exchange Supervisory Committee.

While the 15 August 2022 instructions also permitted cross-border transfers of such funds without separate approval from the Foreign Exchange Supervisory Committee, this exemption was cancelled in a quick reversal of the Central Bank of Myanmar on 16 August 2022. Any transfers to abroad, including those by exempted entities and persons who have purchased foreign exchange from an exempted entity, shall still require the prior approval of the Foreign Exchange Supervisory Committee.

# Letter No. FE-1/Paka/2071

On 26 August 2022, the Central Bank issued a new letter regarding the use of 35% export earnings. The letter clarifies, that the use of the 35% of export proceeds for offshore trade payments (by the exporter itself, or buyers of such funds) may be carried out without the need for prior approval from CBM.

For non-trade offshore payments (including service fees, loan interest, capital transaction, etc.) it remains mandatory to obtain prior FESC approval.

In a letter dated 29 August 2022, the Department of Trade informed the Union of Myanmar Federation of Chambers of Commerce and Industry, of the FESC's decision that exporters shall use their 35% export proceeds to pay for containers/shipping charges, commission charges and freight assessment charges. Exporters are not required to obtain approval from the FESC to acquire or remit foreign currencies for such purposes.

# Letter No. FE-1/2861 (Ka)

On 30 December 2022, the Central Bank issued letter No. FE-1/2861(Ka) concerning the earlier Resolution of Proceedings No. 78/2022, which reinstates the exemption for foreign companies from the mandatory exchange of foreign currencies.

Notably, this exemption does not apply to businesses exporting agricultural commodities.

The letter further clarifies that trade payments (for the import of goods) may be carried out by the banks directly, while all other offshore payments shall require the prior approval of the FESC.

# Hundi money transfer services

On 14 January 2023, the Central Bank announced in the Global New Light of Myanmar, that it would implement rules to curb „hundi“ informal money transfers.

Myanmar’s financial system is primarily governed by the Central Bank of Myanmar Law (2013), the Financial Institutions Law (2016) and the Foreign Exchange Management Law (2012), which provide for licensing requirements for most financial services, including payment and remittance services, foreign exchange services and money brokering.

Hundi networks facilitate informal money transfers, not through the movement of cash or wire transfers between banks, but instead based on the performance and trust between the brokers and companies within a specific network. Hundi brokers often operate without any official licenses. As a result, most remittances via hundi networks must be considered illegal in Myanmar.

It should be noted that the SAC enacted certain amendments to the Foreign Exchange Management Law (2012), allowing for administrative and criminal enforcement of the statutory prohibitions not only against the hundi brokers, but also against persons and entities using hundi to remit funds to and from Myanmar.

## **II. FATF Blacklisting**

# Background

- On 21 October 2022, the Financial Action Task Force (“FATF”) announced Myanmar’s addition to its category of “*high-risk jurisdictions subject to a call for action*”, commonly known as the “blacklist”, citing Myanmar’s persistent failure to combat money laundering and terrorist financing.
- As a consequence, countries and financial institutions are advised to apply enhanced due diligence to business relations and transactions with Myanmar.
- Myanmar has in the past already been blacklisted from 2001 to 2006, and again from 2011 until February 2016, when it was moved to the “increased monitor list”, also referred to as the “grey-list”, and subsequently delisted in June 2016 in acknowledgment of the progress made on criminalizing terrorism financing.
- In February 2020, Myanmar was added back to the grey-list of “jurisdictions actively monitored” and many international financial institutions have introduced additional due diligence measures for Myanmar-related transactions.
- As a consequence, and particularly following the political events that took place in the country since February 2021, many jurisdictions and international financial institutions have already introduced additional customer due diligence measures for Myanmar-related transactions, which are similar to the enhanced due diligence measures recommended for blacklisted countries.
- For more information on Myanmar’s FATF blacklisting, please refer to our news alert from October 2022, “*Myanmar added to FATF blacklist*”.

# FATF statement

- FATF has recommended that Myanmar be blacklisted immediately. The blacklisting urges countries to oblige its financial institutions to apply enhanced due diligence for transactions that involve Myanmar entities or citizens. As FATF is not a supranational legislator or supervisory-body for financial institutions, this is merely a non-binding recommendation to members and other jurisdictions to act.
- Notably, the FATF did not call upon its members to take counter-measures against Myanmar (as they did in the case of Iran and North-Korea).
- Since Myanmar has historically been a country of concern and was just recently grey-listed, many international financial institutions have already implemented similar additional customer due diligence measures for transactions that involves Myanmar entities or citizens.

***Luther Comment:*** In various jurisdictions, such as the European Union, guidelines on enhanced due diligence measures have already been applicable for Myanmar since its grey-listing in 2020. Similarly, Singapore's Monetary Authority referred to instructions issued after the events that took place in February 2021.

In those jurisdictions, no new instructions are to be expected.

# Enhanced due diligence measures

- According to FATF recommendations, enhanced due diligence measures mean that financial institutions should examine, as far as reasonably possible, the background and purpose of all complex, unusual and large transactions and all unusual patterns of transactions, which have no apparent economic or lawful purpose.
- Where the risk of money laundering or terrorist financing is higher, financial institutions shall conduct enhanced customer due diligence measures, consistent with the risks identified. According to the official FAFT guidelines on risk-based approach for the banking sector, customer due diligence under the risk-based approach comprises:
  - Identifying the customer and, where applicable, the customer's beneficial owner;
  - Verifying the customer's identity on the basis of reliable and independent information, data or documentation to at least the extent required by the applicable legal and regulatory framework;
  - Understanding the purpose and intended nature of the business relationship and, in higher risk situations, obtaining further information (e.g., information on sources of funds); and
  - Ensure compliance with national and international sanctions legislation by screening the customer's and beneficial owner's names against the UN and other relevant sanctions lists.

***Luther Comment:*** Based on our experience, most financial institutions have already implemented the central customer due diligence measures recommended for higher-risk business relationships with respect to their Myanmar business



# Remittances and humanitarian aid

- In its statement, the FATF highlighted that “*when applying enhanced due diligence measures, countries should ensure that flows of funds for humanitarian assistance, legitimate NPO activities and remittances are not disrupted.*”
- This is to be understood as a general encouragement to ensure that any remittances to and from Myanmar remain possible and that humanitarian and non-profit activities to be exempted from the enhanced due diligence requirements (or at least ensure that such measures do not disrupt the funding of such activities).
- Ultimately, it will however be the national legislators and respectively the financial institutions who decide on the practical implementation of these measures

# Practice update

The practical consequences of the FATF blacklisting vary for different countries and financial institutions:

- While transactions with Myanmar continue to be facilitated by financial institutions in Singapore, most of them have suspended the opening of new bank accounts for businesses with ties to Myanmar, particularly Myanmar citizen shareholders.
- Transactions between Thailand and Myanmar remain possible, as does the opening of bank accounts by Thai companies with ties to Myanmar.
- Western banks continue to scrutinize bank accounts and transactions of Myanmar residents, and may be inclined to close such accounts.
- Banks in the Middle-East have adopted a flexible approach to Myanmar customers, allowing a relatively smooth account opening for companies with ties to Myanmar.

# III. Other Updates

# Visa update

## Visa and stay permit applications within Myanmar

On 15 September 2022, DICA announced the following new regulations for the issuance of recommendation letters for visa and stay permit applications and extensions:

- To be eligible to apply for a recommendation letter, the employing enterprise must have been incorporated/ registered with DICA for at least one year before submitting a visa extension application
- Enterprises which have in the past been “suspended” for failure to file an Annual Return, or have been struck off the register, will only be allowed to apply for stay permit and visa extensions after they have complied with their legal obligations for a period of at least one year following the suspension/ strike off

DICA further announced that enterprises must apply for the recommendation letters at least 90 to 120 days before expiry of the foreigner’s current permit or visa, which was subsequently reduced to a minimum remaining validity of 60 days.

Notably, applicants are not permitted to leave Myanmar while the application is pending, or have to restart the entire process.

***Luther Comment:*** Based on our own experience and feedback received from clients, the regular application process for visa and stay permit applications and extensions in Myanmar can currently take several months. In some cases, applications submitted as long as four months ago are still pending.

# Visa update

## Visa application with Myanmar embassy

- In general, visa, including long-term multiple journey visa, may be applied for at one of Myanmar's 40 foreign embassies and consulates.
- Multiple journey visa are usually available if the applicant in the past has received two or more visa from the respective embassy. Any long-term visa is however subject to an initial check with the Naypyidaw Immigration Department, which may take 6-8 weeks or more. Subsequent renewals of the long-term visa can usually be facilitated within one day.
- The application process and even the required documents may vary depending on the relevant embassy/consulate.

## Business e-visa

- Citizens of ca. 100 countries may apply for electronic business or tourist visas online (<https://evisa.moip.gov.mm/>). E-Visas are usually issued within three working days and valid for 90 days from the date of issue, allowing a stay of up to 28 days (for tourists) or 70 days (for business travelers with an invitation from an enterprise registered in Myanmar).
- E-stay extension is available. This allows foreigners residing and working in Myanmar who have entered Myanmar via e-Visa (Business) to apply for a Stay Extension and Re-entry Visa online.

# Public Ruling – Tax Evasion

## Public Ruling 3/2022 dated 16 November 2022

With effect from 1 January 2023, public ruling 3/2022 became effective, which clarifies which defaults may be considered tax avoidance and tax evasion under the Tax Administration Law (2019).

Most notably, the ruling stipulates that the deliberate failure to file tax returns, the submission of false or misleading statements in tax returns, and the underreporting of income shall constitute tax evasion, which is punishable as a criminal offence with imprisonment for a term not exceeding seven years and/or a fine of MMK 250,000 or the amount equal to 100% of the tax avoided, whichever is higher.

The ruling further provides that tax evasion may result in additional prosecution under the Anti-Money Laundering Law (2014).

***Luther Comment:*** The recent public ruling applies to both corporate tax obligations (such as corporate income tax and commercial tax), but also the employer's obligations concerning the filing and payment of personal income tax for its employees.



**Q&A**

# Thank you for your attention.



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