

The British Chamber of Commerce Myanmar will consolidate the various regulations into one document. We cannot 100% confirm that all the reports are accurate and are intended as a guideline only. We will provide updates as and when new information emerges.

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Banking and Financial Regulatory Report

In the report, British Chamber of Commerce Myanmar has recorded all relevant notifications, directives, announcements, guidelines, and clarifications relating to the banking and finance sector issued to the Central Bank of Myanmar in order to provide the latest regulation changes of the Banking and Financial Industry occurring in Myanmar with the purpose of getting updated information to all members and non-members of British Chamber of Commerce Myanmar.

Revocation of the exemption of DICA companies “with 10% or more foreign investment” from compulsory conversion

The meeting minutes state that companies operating with the permission of the Directorate of Investment and Company Administration (DICA) shall be treated as businesses exempted from Notification 12/2022 if they have 10% or more foreign investment.

According to the Letter No. FE-1/739 of CBM, after having notified banks of this exemption less than a month ago, the Central Bank revoked the exemption of DICA companies “with 10% or more foreign investment” from compulsory conversion.

Virtual Meeting Minutes between the Central Bank of Myanmar and AD licensed banks regarding the CBM’s Notification No. 12/2022

At the meeting, the Deputy Governor of the CBM and the Director General of the Foreign Exchange Management Department explained the directives issued in relation to Notification No. 12/2022 and answered questions asked by AD licensed banks.

As Meeting Decisions:

1. If in companies doing business with permission of the Directorate of Investment and Company Administration (DICA) there is 10% or more foreign investment, they may do such business exempted from the CBM's Notification 12/2022.
2. For exempted businesses, make a list of the remaining balances in foreign currency accounts after subtracting the purchased amount until 10th June 2022 (reported to the CBM) from the balance before 4th April 2022, and for non-exempted businesses, make a list of the balances, and submit by 5:00 pm on 10th June 2022 at the latest.
3. On matters from before 4th April 2022, if a ship arrived and goods are to be unloaded and paid for, and there are sufficient funds in the customer's foreign currency account, transactions are only allowed if the import license was issued before 4th April 2022, or the ID [import declaration] was made before 4th April 2022 if no license is needed, and the following points have to be shown -
 - Showing that the customer has sufficient funds in the foreign currency account (showing the balance amount, or stating that the balance is sufficient, or showing that the margin has been deducted);
 - showing the import license date;
 - showing the ID date if no license is needed.
4. For transactions that have not been approved by the CBM due to an incomplete submission, but that comply with the above points, to resubmit the above points.
5. Make sure that the directives issued by the CBM are understood not only by the managers of the bank, but also by those who are dealing with the operations.
6. Care should be taken to ensure that foreign currency accounts allocated by a decision of the Foreign Exchange Supervisory Committee are not resold by Account transfer.

7. To sell foreign currency to petrol companies with the permission of the Foreign Exchange Supervisory Committee as soon as possible according to business needs.
8. Businesses, organisations and companies exempted from Notification No. 12/2022 may transfer between their own accounts at different AD banks, but the bank shall take responsibility for the transfer and make sure that no mistakes are made.
9. Exempted organisations such as the UN do not have to convert the salary of local staff to MMK on the same day, but if the employee wants to withdraw it to use it, this may be done in MMK only.
10. Things to keep in mind when making entries in the ERS [electronic reporting system]: **State-owned banks to implement**
 - State-owned banks, the Union Government and Union Ministers should take care not to erroneously enter the revenue of departments in the Non-trade Inward (Real-time) and Export Proceeds Utilization list.
 - Banks should take steps to prevent erroneous entries when reporting with the ERS.
11. At the meeting on 22nd April 2022 stipulate that no transfers shall be made from one foreign currency account to another without exceptions. However, a transfer from an exempted business that may hold foreign currency in its foreign currency account to an account of a Ministry shall be carried out.
12. Requests for the purchase of foreign currency may be submitted to the Foreign Exchange Supervisory Committee through the Ministry of Commerce if an import license was already issued or, if no license is needed, an ID was already made before 4th April 2022.

**CBM Notice about Criminal Prosecution against non-compliant exporters from 2016-18
Central released on 9th May 2022**

1. It is important to obtain export revenues in full as they are the main source of foreign currency inflow into the country. Therefore, section 38B Foreign Exchange Management Law and para. 35 Foreign Exchange Management Regulation provide that exporters must deposit their export earnings in foreign currency into their bank account within six months (from 10th November 2021, within three months) from the date of the shipment of the goods.

2. Therefore, exporters who exported in 2016, 2017 and 2018 had to transfer their export earnings within six months to their bank accounts in foreign currency. To ensure compliance, the [SAC's] Central Committee to Ensure a Smooth Flow of Trade and Goods, the Ministry of Investment and Foreign Economic Relations, the Ministry of Legal Affairs, the Ministry of Commerce, the Central Bank of Myanmar (CBM), the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and banks authorised to deal in foreign exchange (AD [*authorised dealer*] banks) together did the following:
 - (a) Clearing by the AD banks (within 3 years);
 - (b) Clearing by UMFCCI (after 60 days);
 - (c) Announcement of the clearing in newspapers and on the CBM website (after 60 days);
 - (d) Ministry of Commerce revoked exporter/importer registration certificates (Pakatha) of those who did not pass clearing (after 30 days); and
 - (e) holding five meetings with exporters led by the Central Committee to Ensure a Smooth Flow of Trade and Goods.

3. Exporters are required to comply with section 38B Foreign Exchange Management Law which states that “no one shall fail to deposit all export earnings in foreign currency into his own bank account in the state within the prescribed period.” A violation of this obligation shall be prosecuted according to section 42A of this law according to which a violator “shall be punished with imprisonment for a term not exceeding 1 year or with a fine or with both.”

4. Although, as per paragraph 2, non-compliant companies with exports in 2016, 2017 or 2018 were notified to repatriate their export earnings, exporter/importer registration certificates were revoked, and there were several meetings and discussions, there still remain 158 companies that have not repatriated their export earnings.

Notification 27/2022 about Export Earnings to be Repatriated within 45 (export to Asia) or 90 days released on 6th May 2022

1. According to the Foreign Exchange Management Law, the Foreign Exchange Management Regulation and CBM Notification No. 46/2021 dated 10th November 2021, exporters must deposit all their export earnings in foreign currency into their bank accounts in the state within 3 months from the date of shipment, and banks licensed to deal in foreign exchange (AD [*authorised dealer*] banks) must check whether exporters have received export earnings within 3 months from the date of shipment of the goods as evidenced by the export documents.
2. Export earnings from the shipment of goods to Asian countries shall be deposited within 45 days, and export earnings from the shipment of goods to other countries shall be deposited within 90 days in foreign currency into the exporter's bank account in the state. Action will be taken under section 42A Foreign Exchange Management Law if non-compliance is found.

CBM directive on exemption for Sino-Myanmar and Thai-Myanmar border trade released on 26 April 2022

1. Exports and imports under the Sino-Myanmar border trade and the Thai-Myanmar border trade programmes are not covered by the referenced Notification. Therefore, instructions are given to comply with the following banking procedures for exporters and importers:

- (a) Payment for imports by importers shall be made by a "designated bank" without

- the need for submission to the Foreign Exchange Supervisory Committee;
- (b) concerning the export earnings of exporters, banks shall scrutinise whether the export earnings of exporters are transferred to their domestic bank accounts in accordance with the Foreign Exchange Management Law and Regulation;
 - (c) after export earnings are transferred to banks licensed to deal in foreign exchange (AD [= *authorised dealer*]), exporters may apply the proceeds for their own use and [or?] sell them to the bank within one month, with the rest remaining in the respective bank. The AD licensed bank shall convert the balance of export earnings to kyats on the first day after one month from the receipt of the export earnings;
 - (d) banks must continue to inform the Foreign Exchange Management Department using the Border Report Module of the Electronic Reporting System (ERS) regarding foreign currency activities under the Sino-Myanmar border trade and the Thai-Myanmar border trade programmes.

Exemptions from compulsory conversion released on 20 April 2022

1. The meeting of the Foreign Exchange Supervisory Committee No. 4/2022 discussed and decided exemptions under article 3 of the referenced CBM Notification.
2. Therefore, the following items are not covered by the referenced CBM Notification No. 12/2022 according to meeting no. 4/2022 of the Foreign Exchange Supervisory Committee.
 - (a) Foreign direct investment activities carried out with the permission of the Myanmar Investment Commission;
 - (b) Investment activities operated in special economic zones;
 - (c) Foreign diplomats and their family members at embassies established in Myanmar from countries with diplomatic relations with Myanmar; foreign staff members of the diplomatic corps with the same rank as the diplomats serving at

- these embassies;
- (d) Staff of the UN and its agencies established in Myanmar and Myanmar nationals holding a UN staff (laissez-passer) passport;
 - (e) Foreign staff at development agencies assisting Myanmar;
 - (f) Diplomatic foreign staff of international organisations (e.g. International Committee of the Red Cross, International Labour Organization, etc.), INGOs and development agencies (e.g. TICA, JICA);
 - (g) State/citizen international airlines.
3. When carrying out foreign currency activities mentioned in para. 2 above that are not covered by Notification No. 12/2022, banks with a foreign exchange dealer license (AD [= “*authorised dealer*”]) may do so only with documentation certifying that the organisation falls under para. 2 and after having done Know Your Customer (KYC) and Customer Due Diligence (CDD) procedures. Actions must be reported to the Central Bank of Myanmar and documented. The bank is responsible for any defects.

CBM directive on, among others, incoming and outgoing foreign currency released on 5th April 2022

1. In the referenced notification, the CBM issues directives with regard to foreign currency received by Myanmar residents from abroad, the transfer of foreign currency to a destination abroad, and the foreign currency in foreign currency accounts of residents.
2. According to the referenced notification, Authorised Dealer banks must do the following within 1 working day with regard to the foreign currency coming into foreign currency accounts of residents.
 - (a) If the incoming amount is export earnings, the foreign currency must be credited to the respective corporate account on the incoming day; the Authorised Dealer bank must purchase this amount at the exchange rate specified by the CBM and credit the amount to the MMK account.

- (b) If the incoming amount is a service fee or of another type, the foreign currency must be credited to the respective corporate or personal account on the incoming day; the Authorised Dealer bank must purchase this amount at the exchange rate specified by the CBM and credit the amount to the MMK account.
- (c) If the incoming amount is for investment, all funds except foreign currency exempted with the approval of the Foreign Exchange Regulatory Committee must be credited to the respective corporate account on the incoming day; the Authorised Dealer bank must purchase this amount at the exchange rate specified by the CBM and credit the amount to the MMK account.
- (d) If the incoming amount is a loan for investment, the bank must verify whether it was approved by the CBM according to section 29A Foreign Exchange Management Law and para. 48 Foreign Exchange Management Regulation, and if the approval was obtained, all funds except foreign currency exempted with the approval of the Foreign Exchange Regulatory Committee must be credited to the respective corporate account on the incoming day; the Authorised Dealer bank must purchase this amount on the day of the crediting at the exchange rate specified by the CBM and credit the amount to the MMK account.
- (e) If the incoming amount is a unilateral transfer, the bank must verify whether it was approved by the CBM according to paras. 55, 56 Foreign Exchange Management Regulation, and if the approval was obtained, the amount must be credited to the respective corporate *[sic]* account on the incoming day; the Authorised Dealer bank must purchase this amount on the day of the crediting at the exchange rate specified by the CBM and credit the amount to the MMK account.

3. The transfer by residents of foreign currency to a destination abroad may only be done with the approval of the Foreign Exchange Regulatory Committee according to Notification 12/2022. Therefore, any transfer, including those specified below, must be submitted for approval according to the Foreign Exchange Management Law and Regulation.
 - (a) Payment for imported goods (including advance payment);
 - (b) Payment of service and other fees;
 - (c) With regard to foreign investment, transfer of profit from the investment;
 - (d) Payment made for investment abroad;
 - (e) Payment for loans from abroad and interest thereon;
 - (f) Payment of expenses specified in para. 27 Foreign Exchange Management Regulation

4. If the transfer of funds to a destination abroad has been approved by the Foreign Exchange Regulatory Committee, the Authorised Dealer Bank shall sell the foreign currency at the exchange rate specified by the CBM to the approved transferor and may collect MMK 3 per USD as service fee.

Exempting accounts held by Union Ministries from compulsory conversion released on 5th April 2022

1. In the referenced notification, the CBM issues directives how to proceed with foreign currency received by Myanmar residents from abroad and the transfer of foreign currency to a destination abroad.

2. We would like to inform that the referenced notification does not cover the accounts of Union Ministries of the Government of Myanmar.

Establishment of the Foreign Exchange Supervisory Committee released on 4th April 2022

1. The Foreign Exchange Supervisory Committee has been established in order to carry out the functions required to stabilize the foreign exchange rate and efficiently use foreign currency for the economic development of the Republic of the Union of Myanmar.
2. The functions of the Foreign Exchange Supervisory Committee are as follows -
 - Reviewing and permitting the use of foreign currency needed for importing machinery required for investment activities in the country and by manufacturing businesses, commercial vehicles, and production equipment and raw materials;
 - reviewing and permitting the use of foreign currency needed for importing goods that are essential for the livelihoods of people: fuel, pharmaceuticals, cooking oil, fertilisers, pesticides, and construction materials that are not available locally;
 - reviewing and permitting the use of foreign currency needed by citizens going abroad for medical treatment, on educational trips, on religious trips, or for other social reasons;
 - reviewing and permitting the use of foreign currency required for the import of general goods, repayment of foreign loans and interest, payment of service fees, and remittance of profits from investments;
 - reviewing and permitting, upon mandatory application, the use of foreign currency for the import of social or luxury goods;
 - supervising foreign currency transactions in domestic and foreign investment activities in the country, manufacturing businesses, export/import businesses, and services businesses including education and health;
3. The Foreign Exchange Supervisory Committee shall furthermore perform foreign exchange supervisory functions for other matters as may be assigned.

Notification 12/2022 about the Compulsory Conversation released on 3rd April 2022,

1. The foreign exchange earnings of the locals must be sent back to Myanmar to the foreign Currency account opened at the Foreign Exchange Trading (AD) licensed banks and exchange for Myanmar Kyats within one working day.

2. Transferring Foreign currency abroad must be carried out through the AD licensed banks with the permission of the foreign Exchange Supervisory Committee.
3. Foreign Currency in various foreign currency accounts that have entered Myanmar before the date of issuance of this notification shall also be made in accordance with the above mentioned as per notification.

Directive 4/2022 about the CBM foreign Exchange Rate Reference released on 3rd April 2022

1. Starting from 4th April 2022, all foreign currency (from trade or non-trade) coming from abroad into the accounts with Authorised Dealer banks of person residing in the country, except exempted income shall, within one day from its arrival, be converted to MMK and transferred to a MMK account opened by the recipient
2. The conversion of foreign currency to MMK shall be done at the exchange rate of USD 1 = MMK 1,850. Other currencies shall be converted according to the attachment, calculated based on an exchange rate of USD 1 = MMK 1,850. The CBM will update if there is a change in the exchange rate.
3. Starting from 4th April 2022, the transfer of foreign currency to a destination abroad shall only be done with the approval of the Foreign Exchange Regulatory Committee, Republic of the Union of Myanmar. Directives on these matters will be issued separately.
4. Foreign currency in the accounts opened with Authorised Dealer banks before 3rd April 2022 shall also be treated as per above.