
Recent Foreign Currency Measures

Myanmar Legal Update Webinar

Thank you for joining our webinar on 10 August 2022

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10 August 2022

About MLMHM

- Myanmar Legal MHM provides an international standard of practising Myanmar law.
- Since 2012, we have been actively working to assist Myanmar in updating its laws and regulations, and since our office opened in 2014, we have advised on some of the most prominent transactions in Myanmar.
- We remain fully operational with an on-the-ground team.
- Our team includes experienced Myanmar lawyers, including our Senior Myanmar Legal Adviser, Daw Khin Cho Kyi, and Partner, U Win Naing. The office also has Japanese, Thai and Commonwealth qualified lawyers.





I. SETTING THE SCENE

CBM Measures on Foreign Exchange

Major developments regarding foreign exchange restrictions in Myanmar:

- April-August 2021 (Directive No 5 / 2021, 8/2021 and 11/2021): Foreign exchange not to exceed specified spread, initially set at 1.6% in April and revised to 1% in May and 0.8% in August (managed exchange rate)
- September 2021 (Directive No 12 / 2021): Revocation of cap on foreign exchange transactions (eg, freely trading rate)
- September 2021 (Letter No. FE-1/848): Banks asked to restrict foreign currency bank transfers to where required for import purposes.
- November 2021 (Directive No 18 / 2021): Foreign exchange to be conducted within 0.5 per cent of CBM's published reference rate (managed exchange rate re-introduced)
- April 2022 (Notification No 12 / 2022): Compulsory conversion of foreign currency based on reference rate (1850 kyat per USD) and Foreign Exchange Supervisory Committee approval required for offshore remittance.
- July 2022 (Letter No FE-1 / 744 (Ka)): Request for suspension of repayment of foreign loan
- 8 August 2022: CBM reference rate changed to 2,100 kyat per USD.
- 10 August 2022 (Directive No 11 / 2022): Foreign exchange not to exceed specified spread of ± 0.3 % of the reference rate.



II. REQUEST TO SUSPEND LOAN REPAYMENTS

Request to Suspend Loan Repayments

Samples of headlines

“CBM asked commercial banks across the country to suspend loan repayments in foreign currencies to shore up the weakening kyat.”

“Myanmar’s central bank has ordered borrowers to suspend repaying foreign loans in its latest measure to conserve foreign exchange reserves for the crisis-hit economy.”

Request to Suspend Loan Repayments

CBM Letter No FE – 1 / 744 (Ka), 13 July 2022

“The AD banks, regarding to the subject matter pursuant to referenced Foreign Exchange Management Law and Foreign Exchange Management Regulations, are hereby notified to inform to its customers who are the companies and organisations who have taken loans from overseas to negotiate as necessary with their overseas lenders for the amendment of the repayment schedule of the interest of loan and principal loan in order to suspend for the moment the payment of interest and repayment of principal loan taken by the residents from overseas either in cash or in-kind.”

Request to Suspend Loan Repayments

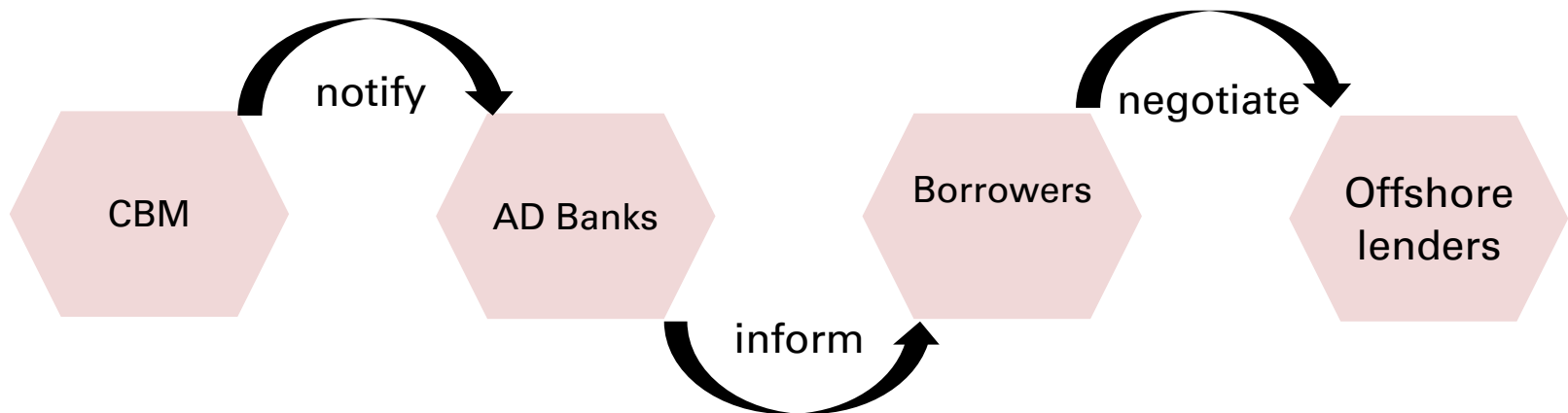
Legal basis of CBM Letter No FE-1 / 744 (Ka):

- Section 29-A (FEML) provides that a Myanmar resident shall, in taking out a foreign loan, carry out such taking of a loan in cash or in kind in accordance with CBM's stipulations.
- Section 38-D (FEML) provides that a person shall not, among others, undertake a foreign loan except in compliance with CBM's stipulations.
- Section 42-A (FEML) provides for potential penalties of imprisonment or fine for breach of the above sections.
- Regulation 48 (FEMR) requires a Myanmar resident to seek approval for foreign loans in accordance with CBM's directives.

Request to Suspend Loan Repayments

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Request to Suspend Loan Repayments

Parties	Issues to Consider
AD Banks	<ul style="list-style-type: none">• AD banks need to consider the scope of their obligations in relation to informing their customers to seek rescheduling of offshore loans (what action to be taken, would evidence be required?)• AD banks to consider and monitor whether CBM will generally seek to restrict payment of offshore loans
Offshore lenders	<ul style="list-style-type: none">• Lenders can expect to receive requests for suspension of repayment of loans as a result of the CBM's letter and need to consider whether to agree to accept the borrower's requests:<ul style="list-style-type: none">○ If agree, lenders must request borrowers to obtain CBM's approval of a new repayment schedule○ If no agreement, to the extent borrowers are unable to make payments under loans, consideration needs to be given to potential defaults and cross-defaults
Borrowers	<ul style="list-style-type: none">• Borrowers need to consider their options and rights in relation to offshore loans where it is not possible to agree to rescheduling of payments and to make repayments.

Request to Suspend Loan Repayments

Factors to consider when taking action pursuant to CBM Letter No FE – 1 / 744 (Ka)

- The CBM Letter does not mention how long the CBM's order under the Letter will be in force.
- The economic situation in Myanmar and the recent foreign currency restrictions may make it practically difficult for borrowers to make repayments of offshore loans.
- **In any event, all repayments of loan to offshore lenders must first obtain approval from the Foreign Exchange Supervisory Committee**



III. COMPULSORY CONVERSION OF FOREIGN CURRENCY

Compulsory conversion of foreign currency

Who is subject to the compulsory conversion measure?

- All residents in Myanmar other than Myanmar governmental entities and those with an exemption.

What is the compulsory conversion measure?

- From 4 April 2022, those subject to the measure must deposit foreign currency amounts with an AD bank and such currency must be converted to Myanmar kyat at the 1,850 kyat per US dollar reference rate (CBM Directive No 4, 2022). [Note: The reference rate is increased to 2,100 kyat per USD, effective 8 August 2022.]

What amounts are subject to the compulsory conversion requirement?

- All earnings in a foreign currency (including export earnings and earnings from services).
- 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).
- Unilateral transfers in a foreign currency (including gifts).
- Foreign currency held in Myanmar AD banks prior to 3 April 2022.

Compulsory conversion of foreign currency

Who is exempt from compulsory currency conversion?

- Foreign direct investments carried out with MIC permission (including MIC permits, potentially MIC endorsements) (CBM Letter No FE-1/69)
- Investments conducted at special economic zones (eg, Thilawa SEZ) (CBM Letter No FE-1/69)
- Foreign diplomats; staff of UN and its subsidiaries; foreign staff of foreign development agencies working on aid projects in Myanmar (CBM Letter No FE-1/69)
- Myanmar government-owned and Myanmar citizen-owned international airlines (CBM Letter No FE-1/69)
- Businesses conducting trade at Myanmar's borders with China and Thailand (provided one month to deposit earnings from trade at AD banks) (CBM Directive 7 / 2022)
- Logistics sector permitted amounts - allowances for: (a) members of Myanmar International Freight Forwarders' Association up to US\$300,000; (b) shipping line operators under Myanmar Mercantile Marine Development Association up to US\$2,000,000; and (c) international air cargo service providers and ground handling service providers up to US\$100,000 (FESC decision referred to in MOTC letter of 2 June 2022)
- Specific exemptions: SEZ committees; Export-Import Bank of India; China National United Oil Corporation (Myanmar branch); Punjab National Bank Yangon representative office; amounts held by Woori Bank Representative office at Myanmar Foreign Trade Bank (CBM Letter No FE-1/643)
- **No general exemption for DICA registered companies with foreign shareholding** (previous exemption for DICA registered companies with more than 10% foreign shareholding was revoked under CBM Letter FE-1/540).
- **New Update** (Notification 36/2022, 5 August 2022): Exporters are required to exchange 65% of foreign currency received through export proceeds for Myanmar kyat. [TBC regarding treatment of remaining 35%.]

Compulsory conversion of foreign currency

State of implementation

- CBM Letter No FE-1/754 requiring compulsory conversion for Myanmar incorporated companies with foreign ownership up to 35% should occur as soon as possible (and CBM is required to be provided details of the amount of conversion by 18 July 2022) (with banks required to provide the balance of foreign exchange of companies to CBM by 15 July 2022)
- Reports of individuals and companies having compulsory conversion undertaken.



IV. RELATED FOREIGN CURRENCY RESTRICTIONS

Related restrictions on foreign currency

What are restrictions on foreign currency remittances?

- 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 (CBM Directive 4, 2022).

Can foreign currency be used for local payment?

- Transfers from a foreign currency account to another foreign currency account at an AD Bank within Myanmar are not permitted (other than potentially certain own-account transactions and settlements with government ministries). This restriction applies to those exempted from currency conversion requirements. (CBM Letter No FE-1/PaKa / 194)
- CBM Letter dated 25 May 2022 requires 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.

Related restrictions on foreign currency

Recent developments for importing

- 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 (CBM Directive 4, 2022).
- Consequently, we understand that where importers seek an import licence from the Department of Trade (MOC) to undertake importing of products, it is necessary to have FESC approval for the foreign currency to be remitted for payment. After such approval, the importer may purchase USD at the reference rate.
- We understand there have been significant delays in FESC approvals and the granting of importing licences.
- One development is that, in relation to pharmaceutical and medical importing companies, we understand FESC will allow medical importers to source their own USD where an import licence is sought at MOC once MOC receives the list of those who will source its own USD from the Myanmar Pharmaceutical and Medical Products Entrepreneurs Association. MOC will issue import licences to such importers.

Recent development for exporting

- New Update (Notification 36/2022, 5 August 2022): Exporters are required to exchange 65% of foreign currency received through export proceeds for Myanmar kyat. [TBC regarding treatment of remaining 35%.]

**If you have any questions,
please do not hesitate to contact us.**

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