

Monetary Transactions in Myanmar

1. Background

The political events that have taken place in Myanmar after 1 February 2021 have severely impacted the formal banking sector, wire transfers and cash availability in Myanmar. As a result, the country is currently experiencing a rapid depreciation of the Myanmar Kyat and a severe shortage of cash in both local and foreign currency.

In an effort to counter these developments, the State Administration Council (“**SAC**”) and the Central Bank announced several legislative changes and instructions.

This publication provides an overview of the legal framework governing Myanmar’s financial sector, as well as the recent amendment of the Foreign Exchange Management Law (2012).

2. Current challenges

The most perceptible challenge for Myanmar’s banking system remains the fluctuation and rapid depreciation of the Myanmar Kyat as well as the shortage in cash availability.

Despite all efforts of the Central Bank, including a temporary artificial control of the exchange rate, the value of the Myanmar Kyat decreased by almost 50% against the USD since 1 February 2021. Restrictions on cash withdrawals have further exacerbated concerns about the value of money in banks, prompting the concerned public to seek safety in hard currencies such as the USD.

As a consequence, unlicensed money exchange by businesses with access to foreign currency (e.g. exporters) has flourished over the past months.

In order to control the Myanmar Kyat exchange rate and foreign exchange availability, the Central Bank on 3 October 2021 published Notification 35/2021 stipulating that export proceeds in foreign currencies must be utilized or divested within 30 days (please see below).

Banks were further instructed to comply with increased due diligence requirements for transfers in foreign currency to limit speculation and money exchange transactions by unlicensed money changers.

Faced with increasing limitations on foreign exchange transactions and cash availability at commercial banks, many local and international businesses are forced to consider informal channels to facilitate financial transactions or purchase foreign exchange and cash through unlicensed brokers or agents.

Myanmar’s most common informal channels, particularly for international transfers to and from Myanmar, are the so-called “Hundi networks”. These 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, remittances via Hundi networks are considered illegal in Myanmar and expose customers to numerous legal and practical risks.

Please find below a short overview of the legal framework governing Myanmar’s financial transactions, as well as the risks associated with the use of unlicensed brokers or agents.

3. Legal framework

Myanmar’s financial system is primarily governed by the Central Bank of Myanmar Law (2013) (“**CBML**”), the Financial Institutions Law (2016) (“**FIL**”) and the Foreign Exchange Management Law (2012) (“**FEML**”), as well as the Foreign Exchange Management Regulations (2014) (“**FEMR**”).

3.1. Central Bank of Myanmar Law (2013)

The CBML is the main law governing the activities of the Central Bank and its powers to regulate Myanmar’s financial, monetary and foreign exchange markets, as well as set monetary and exchange rate policies.

The Central Bank is tasked with implementing monetary stability and determining the foreign exchange regime.

The Central Bank is also authorized to issue licenses for financial and foreign exchange institutions.

3.2. Financial Institutions Law (2016)

Under the FIL, financial institutions include banks, non-bank financial institutions and scheduled institutions (i.e. institutions established under other laws than the FIL, such as micro finance institutions).

Pursuant to sec. 12 FIL, *“Any person wishing to carry out banking business shall be (a) a company incorporated under written Laws in Myanmar with a valid license issued by the Central Bank; (b) a foreign bank subsidiary or branch with a valid license issued by the Central Bank; (c) a scheduled institution exempted under section 19”*.

Similar licensing requirements apply for non-bank financial institutions, mobile financial service providers and related businesses.

Only licensed enterprises may engage in any business governed by the FIL, which includes in particular the following activities:

- Money services;
- Credit token business;
- Foreign exchange business;
- Issuing and administering payment instruments (credit cards);
- Money brokering;
- E-Banking and mobile banking; and
- Other activities related to banking business as approved by the Central Bank.

3.3. Foreign Exchange Management Law (2012)

Myanmar's foreign exchange market is regulated by the FEML. Pursuant to sec. 6 and 38 FEML, only authorised persons/institutions holding a foreign exchange licence from the Central Bank may engage in foreign exchange business, which includes:

- Purchase and sale of foreign currency and other foreign exchange within the Union (i.e. to deal in foreign currency in cash and traveller's cheques);
- Payments in foreign currency or foreign exchange within the Union; and

- International payments and transfers in foreign exchange.

While foreign exchange licenses of commercial banks allow foreign exchange transactions in cash, as well as electronically, licensed money changers are usually limited to cash transactions.

4. Recent legal developments

4.1. Amendment of section 41 Foreign Exchange Management Law (2012)

With the objective of controlling unlicensed foreign exchange businesses and illegal remittances via Hundi networks, the SAC on 6 October 2021 enacted an amendment of sec. 41 FEML that expands the liability for non-compliance with notifications, rules and regulations issued under the FEML from “license holders” (i.e. licensed banks or money changers) to “anyone”.

As a consequence, notifications and instructions issued by the Central Bank to control foreign exchange transactions will apply also to (unlicensed) brokers and agents, who may now face additional administrative and/or criminal penalties.

Please find further information on potential risks for unlicensed brokers and agents, as well as their customers, below.

4.2. Central Bank Notification No. 35/2021

To increase availability of foreign exchange, stabilise exchange rates and restrict unlicensed money changing, the Central Bank on 3 October 2021 further issued Notification No. 35/2021 (“**Notification**”) concerning foreign exchange transactions of export businesses (which does however not seem to apply to other businesses).

The Notification repeals the previous Notification No. 33/2021 concerning the conversion of export proceeds, and stipulates that export proceeds may be utilized or divested within 30 days, following which any remaining balance of foreign exchange shall be sold to a licensed bank. Under the previous Notification No. 22/2021, exporters were instructed to convert export proceeds within (4) four months of receipt.

Further, the Central Bank reminded exporters of their obligations under sec. 38(b) and 42(a) as well as sec. 35 FEMR to remit export proceeds within three (3) months from the export date into a bank account in Myanmar.

The use of bank accounts outside of Myanmar remains subject to prior approval by the Central Bank, as stipulated in sec. 11 FEMR.

The Notification stipulates the requirements for the utilisation of export proceeds in foreign currency as follows:

- Exporters must remit and deposit all export earnings into their bank accounts with a licensed bank in Myanmar;
- For a period not exceeding 30 days, exporters may utilise export proceeds in foreign currency for their own business activities or sell such foreign exchange to licensed banks or other (unlicensed) persons and businesses;
- After expiry of the 30 days period, the remaining balance of exports proceeds in foreign currency must be sold to a licensed bank at market exchange rates, but can no longer be sold to unlicensed buyers; and
- Any person or business other than a licensed bank that has purchased foreign exchange from an exporter must utilise the foreign exchange within 30 days, or sell it to a licensed bank, but is not permitted to sell the foreign exchange to other unlicensed buyers.

While it may now be permitted for exporters to sell foreign exchange within the stipulated time frame, this is in practice difficult due to the current banking restrictions related to account-to-account transfers in foreign currency.

According to the guidelines issued by a local licensed bank, foreign currency transfers between customers shall only be permitted for certain purposes after the bank has received clearly defined supporting documents:

For imports:

- Copy of the import declaration;
- Copy of the bill of lading;
- Copy of the sales contract; and
- Copy of the invoice.

For rental (building, machinery, land):

- Copy of the rental contract;
- Copy of the NRC Card; and
- Company certificate/business license.

For business expenses:

- Copy of the invoice;
- Copy of the sales contract; and
- Copy of the company certificate/ business license.

For services fees:

- Copy of the business contract; and
- Copy of the company certificate/ business license.

The guidelines do not provide for the possibility of a sale of foreign exchange by an exporter to an unlicensed person or business.

5. Administrative and criminal penalties

As mentioned above, financial and foreign exchange business generally requires a license. Any person providing financial services without the required licence may be punished under the FIL with imprisonment of not less than two (2) and not more than five (5) years and a fine of up to Myanmar Kyats 500,000,000.

Any person providing unlicensed foreign exchange services may be punished under the FEML with imprisonment for a term not exceeding three (3) years, a fine and confiscation of assets (including the foreign exchange).

As a consequence of the amendment of sec. 41 FEML, any person in violation of rules, regulations, orders and notifications issued by the Central Bank (e.g. exporters acting in contravention of Notification No. 35/2021) may face imprisonment for a term not exceeding one (1) year and/or a fine.

Finally, any person dealing in currency notes and coins for the purpose of making profits (cash brokers) without a license may be punished under the CBML with imprisonment for a term not exceeding two (2) years, a fine and confiscation of assets (including the cash).

While we would submit that the laws may not directly penalize customers of unlicensed brokers and agents (such as Hundis, unlicensed money changers and cash brokers), the risk of a confiscation of funds should be carefully considered. Further, the use of unlicensed brokers and agents may under certain conditions constitute a violation of Myanmar's Anti Money Laundering Law (2014), and invite scrutiny under applicable tax laws.

Luther in Myanmar

Active in Myanmar since 2013, Luther is one of the largest law firms and corporate services providers in Yangon. Our international team of more than 50 professionals consist of lawyers, tax consultants, corporate secretaries and accountants from Germany, France, Italy and Myanmar.

With our “one-stop” service solution, Luther Law Firm Limited and Luther Corporate Services Limited provide a comprehensive range of services to assist and advise clients in all stages of the business lifecycle, namely, from the establishment of a Myanmar business, through on-going legal and tax advice, bookkeeping, accounting, payroll and payment administration up to the dissolution of enterprises.

We devise and help our clients to implement legal, tax and corporate compliance structures that work and let them focus on being successful in Asia's last frontier market. Myanmar's legal framework is governed by both old and new laws and regulations, as well as internal policies and practices of the Myanmar authorities. Many laws dating back to the colonial and post-independence periods are, with more or less changes, still in force. Since its political and economic opening in 2011, Myanmar has embarked on a comprehensive reform process and is currently overhauling its legal framework.

Our local and international colleagues have the necessary knowledge, experience and commercial expertise to serve our more than 450 clients in this rapidly developing country, including multinational investors, MNCs and SMEs, development organisations, embassies, NGOs and local conglomerates.

To advise each client in the best possible way, our lawyers and tax advisors – in addition to their specialised legal and tax expertise – have expert knowledge of specific industries.

Further, our team members are well connected and actively participating and holding positions in various chambers to stay abreast of the latest developments, such as the European Chamber of Commerce in Myanmar, the German Myanmar Business Chamber, the British Chamber of Commerce and French Myanmar Chamber of Commerce and Industry.

We offer pragmatic solutions and recommendations based on best practice guidelines. We never compromise on quality and we always put our clients first. Our lawyers are trained to deliver work products that comply with the highest standards and we will not settle for less.

Awards

“The Legal 500 Asia-Pacific 2021” ranked Luther Myanmar in Band 3 and shortlisted the firm as Law Firm of the Year - Myanmar



In 2021, both Luther Myanmar and Alexander Bohusch individually were ranked in Band 3 by Chambers Asia Pacific.



Legal advisory services

Our international and Myanmar lawyers provide comprehensive legal and tax advice in all areas of corporate and commercial law, including:

Foreign direct investment and market entry

- Support and advice on the choice of location
- Advice with regard to the appropriate market entry and restrictions under the Myanmar Investment Law
- Representation vis-à-vis regulatory authorities
- Application for permits and endorsements under the Myanmar Investment Law 2016 and the Special Economic Zone Law 2014

Establishment of a Myanmar business

- Advising on the type of entity to be established and the optimal corporate & tax structure
- Incorporation of limited companies and registration of foreign corporations ("Branch or Representative Offices")

Corporate law, investment structuring and joint ventures

- National and international joint ventures, PPP projects
- Capital measures (increase and reduction in capital, cash and in kind)
- Advice to members of executive and supervisory boards
- Shareholders agreements, constitutions and rules of procedure
- Disputes among shareholders

M&A advisory

- Support in M&A, domestic and cross-border acquisitions by asset or share deal
- Due diligence
- Corporate restructuring measures
- Post-merger / closing integration

Finance advisory

- Banking, finance and insurance law
- Corporate finance
- Loan and security agreements
- Registrations with the Central Bank and FRD
- Legal opinions

Real estate law

- Sale and purchase agreements and leases
- Financing structures

Non-profit sector

- Advice on the appropriate legal structures for NGOs, development organisations, foundations, social enterprises and charities
- Registration of companies limited by guarantee, associations and NGOs
- Application of tax exemptions

Compliance

- Anti-corruption compliance
- Corporate governance and corporate compliance
- Labour law compliance
- Regulatory compliance
- Tax compliance

Employment and labour law

- Employment and secondment contracts, employment policies
- Registration of employment contracts with Myanmar labour authorities
- Corporate restructuring, redundancy and compensation plans

Immigration law

- Visa, long-term stay permits and foreigner registration cards
- Labour Cards
- Form C (Occupation of Residential Premises)

Contract law

- Negotiation and drafting of commercial agreements
- Registration of deeds and contracts with the authorities
- Advice and assistance on stamp duty payments

International trade and distribution law

- Registration of foreign trading companies
- Review of general terms and conditions
- Supply and procurement agreements
- Distributorship and sales agency agreements

Intellectual property law

- Development and implementation of IP protection strategies
- Registration of trademarks, designs and patents
- License agreements, research and development agreements

Tax advisory and business process outsourcing services

Our tax advisors, company secretaries and accountants support clients with a complete range of BPO services, including:

Corporate secretarial services

- Provision of personnel to assume statutory positions
 - Company secretary
 - Nominee director/officer
- General statutory compliance services
 - Advice on best practice, corporate governance and compliance with Myanmar law
 - Setting up, custody and maintenance of statutory books and registers
 - Filings with the Directorate of Investment and Company Administration (DICA) and the Myanmar Investment Commission (MIC)
 - Preparation of notices, minutes, and other documents pertaining to directors' and shareholders' meetings
 - Provision of registered office address
- Managing changes:
 - Change of name
 - Change in constitutional documents
 - Change in capital structure (transfer of shares, issuance of shares)
 - Change of shareholders, directors, representatives, auditors and company secretaries
 - Change of registered office address
- Cessation of a business
 - Liquidation of companies
 - De-registration of Overseas Corporations (Branch/Representative office)

Tax advice and tax structuring

- International tax (inbound and outbound)
- Direct and indirect taxes
- Tax structuring of M&A transactions
- Transfer pricing

Tax compliance

- Commercial tax and special goods tax
- Corporate income tax and withholding tax
- Personal income tax
- Applications for relief under Double Tax Agreements
- Liaison with the Internal Revenue Department
- Payment of stamp duty

Accounting and financial reporting

- Bookkeeping
 - Setting up the chart of accounts
 - Recording of all payments and funds received
 - Preparation of monthly bank reconciliation statements
 - Recording of all sales, purchase and trade debtors
 - Recording of prepayments and accruals
 - Recording of assets and related depreciation
 - Recording of all commercial tax (CT) on taxable purchases/supplies
 - Extraction of monthly trial balances and general ledger
- Management reports
 - Compiling of profit and loss account and balance sheet
 - Generating aged financial analysis of debtors and creditors
 - Business advisory services such as accounting reports
 - Budget preparation, comparison and analysis of key components of financial performance
 - Statutory accounting
 - Preparation of financial statements and notes to the financial statements

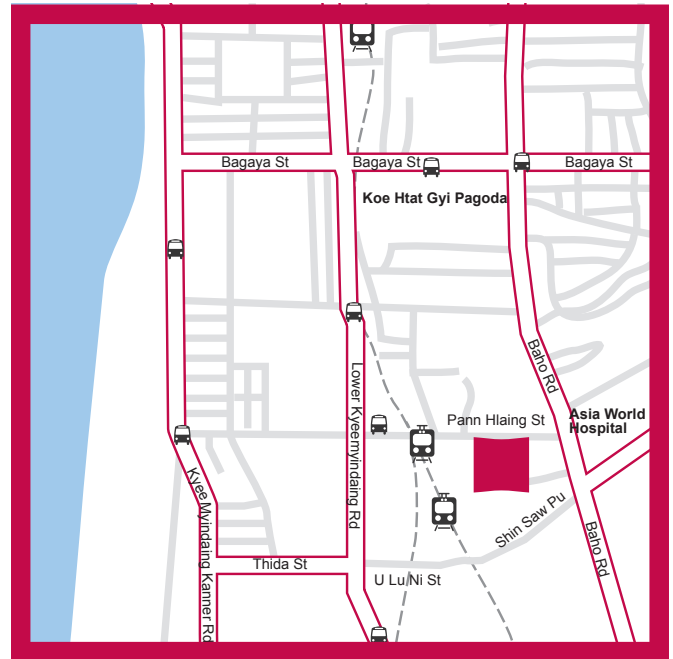
Human resources and payroll administration

- Processing and payment of employee expense claims
- Computation of salaries, social security contributions and personal income taxes
- Provision of payroll reports and financial journals
- Payment of salaries net of personal income tax and social security contributions
- Filing and payment of personal income tax and social security contributions
- Ensuring compliance with tax and social security reporting requirements

Payment administration

- Administration of cash funds deposited with us or in client's own bank accounts
- Account signatory services to enable settlement of company payment obligations and observance of "four eyes principle"
- Cash flow forecasting and processing of accounts receivables
- Issuance of payment vouchers and arrangement of payments

Contact



Description in detail

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