



10<sup>th</sup> June 2022

## **Export earnings kept abroad: How to regain exporter/importer registration certificates revoked by the authorities for failure to repatriate export earnings**

When an exporter fills in an export declaration (“ED”) form, the Customs Department shares (as we understand) the data with the Central Bank. When the exporter receives payment for the goods and the payment is credited to the exporter’s bank account in Myanmar, the commercial bank keeping the account has to notify the Central Bank of the receipt of the payment.

We understand that by comparing both data streams, the Central Bank is able to generate what it calls “ED accounts”. These are sets of data that basically say, “Exporter A shipped goods out of the country for an amount X, but this amount X hasn’t entered Myanmar yet”.

For an exporter, this is a problem because section 38B [Foreign Exchange Management Law](#) para. 35 [Foreign Exchange Management Regulation](#) require exporters to ensure that payment for the goods enters Myanmar within 6 months (originally) from the date of shipment. The Central Bank since [shortened this period](#) to 3 months on 21<sup>st</sup> November 2021 and [changed it again](#) on 6<sup>th</sup> May 2022 to 45 days (export to Asian countries) and 90 days (export to the rest of the world).

Furthermore, since 3<sup>rd</sup> September 2021, repatriated export earnings have to be converted to MMK, originally within 4 months, [then](#) within 30 days, and since [3<sup>rd</sup> April 2022](#), within 1 day.

Non-compliant exporters may have their exporter/importer registration certificate revoked and face criminal prosecution under section 42A Foreign Exchange Management Law. This has [always been so](#), but received renewed attention recently when the authorities very publicly announced the revocation of hundreds of exporter/importer registration certificates and the commencement of criminal proceedings against the offending companies’ directors.

As per a [notice](#) of the Ministry of Commerce’s Trade Department from 24<sup>th</sup> May 2022, however, exporters who lost their exporter/importer registration certificate may apply for a new one, provided that they clear up their export earnings issue.

We have summarised the process below. There are templates for it of which we have annexed an English translation to this primer.



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1. In a first step, the exporter should contact the Central Bank's Foreign Exchange Management Department ("**FEMD**") and request it to check whether there are indeed open "ED accounts" and if yes, to e-mail back a copy.
2. The next step depends on the result of the exporter's investigation:
  - (a) It's a mistake and the export earnings have already been transferred to the exporter's bank account in Myanmar:

In this case, the exporter should go with the export declaration to the bank and request it to issue a credit advice and notify the FEMD accordingly (through the "electronic reporting system" ERS).
  - (b) The export earnings are still sitting abroad somewhere (possibly on a foreign bank account held by the exporter):

In this case, the exporter should transfer them to his bank account in Myanmar, go to the bank with the export declaration and request it to issue a credit advice and notify the FEMD accordingly.
  - (c) There are reasons for not repatriating export earnings:

We suppose that reasons that might be accepted would mainly involve situations where there weren't any export earnings to begin with - e.g., because the foreign buyer never paid, or the exporter had to compensate the foreign buyer for defective goods. In this case, the exporter should notify the FEMD accordingly, with supporting documents.
3. As per the Trade Department's notice, the exporter should be able to apply for a new exporter/importer registration certificate 14 days after his bank notified the FEMD that all export earnings entered Myanmar.
4. We suppose that if there are reasons for not repatriating export earnings, an exporter may apply for a new exporter/importer registration certificate only after the FEMD confirmed that it is satisfied with the reason.



CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

## Procedure to be undertaken by the remaining companies with export earnings that have not yet been repatriated

1. Importers and exporters with export earnings to be repatriated should take the following steps to clear the remaining ED [*“export declaration”*] accounts:
  - (a) Importers and exporters with export earnings to be repatriated may ask the CBM for the remaining ED accounts; the request may be submitted to the Foreign Exchange Management Department (send an e-mail to [ss.femd@cbm.gov.mm](mailto:ss.femd@cbm.gov.mm)).

(E-mail template in Attachment-1)

  - (b) The Foreign Exchange Management Department will generate the outstanding ED accounts in the ERS [*“electronic reporting system”*] and send them back by e-mail.
  - (c) To clear the remaining ED accounts, the company has to visit its bank to have it check whether the money has been received, and if yes, have it clear the ED accounts with the credit advice and the EDs.
  - (d) If the export earnings have not been repatriated yet, they should be transferred to your bank account and after the transfer, you can go to the relevant bank to clear the ED accounts with the credit advice and the EDs.
  - (e) If you would like to explain that the company will not repatriate the export earnings for the remaining EDs to be cleared, you are requested to explain this to the Director General, Foreign Exchange Management Department, Central Bank of Myanmar (send an e-mail to [ss.femd@cbm.gov.mm](mailto:ss.femd@cbm.gov.mm)).

(Template for the letter to be submitted in Attachment-2)

### E-mail template

Attachment-1

To:

Foreign Exchange Management Department

\_\_\_\_\_ Co., Ltd. was listed as a company that exported during the period \_\_\_\_\_ and did not repatriate export earnings. We would like to know what ED accounts are



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remaining in order to clear them, so please send them to us.

With regards

Company name:

Address:

Name of contact person:

Phone number:

**Company letter head**

Attachment-2

Letter no.:

Date:

Director General

Foreign Exchange Management Department

Central Bank of Myanmar

**Subject:** Explanation that export earnings will not be repatriated

1. \_\_\_\_\_ Co., Ltd. is a company engaging in the business of \_\_\_\_\_. We made exports during the period \_\_\_\_\_ and are on the list of companies that have not repatriated export earnings.
2. (Write down reason why export earnings will not be repatriated.)
3. Therefore, export earnings will not be repatriated for the above EDs, so we would like to respectfully request to kindly remove them from the list of export earnings that are still to be repatriated.

(Contact person's name: \_\_\_\_\_ Phone number: \_\_\_\_\_)

Kind regards

(CEO or MD)

One of them to sign and apply.



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### About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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