



Dear Readers,

Welcome to a new edition of our newsletter.

1. Central Bank centralises foreign currency trading

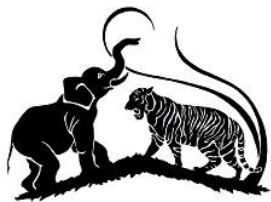
Since 3 April 2023, foreign currency entering the country by bank transfer are [mandatorily converted](#) to MMK [at the Central Bank rate upon arrival](#). The Central Bank (“CBM”) rate is significantly less favourable than the market rate.

Certain entities and individuals (in particular, [foreign-invested MIC and SEZ companies](#), [INGOs](#), [airlines in domestic ownership](#), [logistics companies](#), [shipping lines](#), [exporters](#), [Myanmar workers abroad](#), [companies with more than 35% foreign ownership](#)) are exempted. However, terms and conditions apply: E.g., the exemption for logistics companies and shipping lines is capped at USD 300,000 or USD 2 million, respectively, and exporters may only keep 35% of their earnings in foreign currency for up to 30 days.

In principle, exempted entities and individuals may use their foreign currency themselves or sell it at a freely negotiated rate to a bank or any third party ([CBM Letter No. FE-1/Pa Ka/1937 date 16 August 2022](#)). In practice, this does not always work well as banks usually do not pay out foreign currency, but MMK, and tend to use the CBM rate when calculating the MMK amount.

On 21 June 2021, the CBM announced an “online trading programme” ([English translation](#)) which centralises the foreign currency trade by exempted entities and individuals in the hands of the Central Bank. According to the CBM letter,

- banks shall send daily between 10:00 a.m. and 11:30 a.m. online to the Central Bank a list of dealings that are planned to be transacted between banks and customers, of companies that want to sell, and of companies that want to buy;
- lists shall be sent for both trade and non-trade transactions;
- concerning companies that want to sell, it shall be necessary to send and the bank shall be responsible for verifying particulars such as company name, business type, date on which the money entered the account, last date on which the money may be used, source of the income (export proceeds; exempted company; CMP; salary);
- concerning companies that want to buy, it shall be necessary to send and the bank shall be responsible for verifying particulars such as company name, business type, amount to



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be purchased, type of currency, reason for the purchase (if the purchase is for trade, the goods to be imported and their import license or ID [*import declaration*]; if the purchase is not for trade, the purpose of the purchase), bid rate, settlement date;

- the CBM will review the list of buyers and sellers and the lists of transactions to be carried out between banks and customers and co-ordinate and decide such things as which company may do the transaction, the amount and the exchange rate;
- the CBM will reply on the transaction lists at the latest at 1:00 p.m.;
- likewise, transactions which should be carried out on the next day (T+1) and bank to bank sale and purchase dealings shall be initially submitted to the Central Bank's online trading programme and then processed on the Refinitiv platform;
- lists of daily transactions and the weighted average rate (WAR) will be announced on the website of the Central Bank of Myanmar.

On 22 June 2023, the CBM announced that 6 banks participated on the first day of the online trading programme, transacting USD 6.89 million at an exchange rate of MMK 2,920 - 2,922. The CBM insists "that, as the exchange rate traded in the online trading programme is the market price, the exchange rates displayed elsewhere (including social media) are illegal."

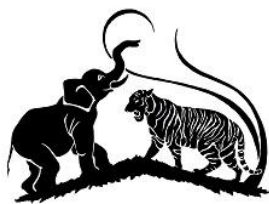
2. Impact of OFAC sanctioning MFTB and MICB

On [21 June 2023](#), the Office of Foreign Asset Control, an agency of the US Treasury Department, added state-owned banks Myanmar Foreign Trade Bank (MFTB) and Myanmar Investment and Commercial Bank (MICB) as well as the SAC's Ministry of Defence to its Foreign Specially Designated Nationals and Blocked Persons list ("**SDN List**").

Government departments and state-owned enterprises such as Myanmar Oil and Gas Enterprise (MOGE) appear to be having their foreign currency accounts at MFTB or MICB.

An important issue with these banks being sanctioned is that they hold accounts of third parties that are not sanctioned: Would a transfer of funds to such accounts involve the risk of violating US sanctions, although the intended recipient of the transfer is not sanctioned?

The answer appears to be yes, as several entries ([here](#), [here](#) and [here](#)) in the OFAC's FAQ list suggest that any transaction "by, to, or through" a blocked financial institution is prohibited.



Another important issue is whether non-US persons might find themselves entangled in the US sanctions regime if they send money to an account held by their business partner with MFTB or MICB.

As such, only “US persons” (US citizens or permanent residents; entities incorporated in the US, including a foreign branch; any person in the US) are obliged to comply with US sanctions regulations.

However, American authorities are known for trying to enforce their regulations also outside of their jurisdiction. We understand that non-US persons may face US sanctions exposure if they cause a US person to breach the underlying Executive Orders ([14014](#) and [13818](#) in case of Myanmar) as we understand that US authorities may consider such conduct to be a breach of the Executive Orders’ anti-avoidance and anti-conspiracy provisions. This might, among others, be done by involving an employee who is a US national, instructing a US bank to make payment to a blocked person, or camouflaging the origin or destination of funds.

Payments in USD are inherently risky as almost all USD bank transfers are routed through a correspondent bank in the US, even if neither the sender’s bank nor the recipient’s bank is domiciled in the US. If the recipient is a blocked person, US authorities may, if they are aggressive, treat the sender as being in breach of US sanctions for having instructed the US correspondent bank to make funds available to a blocked person.

OFAC issued a [general license](#) to allow the winding down until 5 August 2023 of transactions involving the two banks.

Investors that have leased land from or are in a joint venture with government departments or organisations may wish to review whether they make any payments to an MFTB or MICB bank account and analyse the impact (if any) of recent US sanctions.

Please see our [primer](#) for more information on sanctions involving entities and persons in Myanmar.

3. Lines of goods qualifying for import with an “automatic license” reduced in number

Export and Import Newsletter 8/2023 dated 25 April 2023 ([Burmese](#)) abolishes the import of goods without an import license from 1 June 2023. It specifies 3,075 lines of goods for which previously no import license was required as qualifying for “automatic licensing” in Myanmar Tradenet 2.0. Other goods are subject to “non-automatic licensing”.



Export/Import Newsletter 9/2023 dated 21 June 2023 ([Burmese](#)) reduces the lines of goods qualifying for automatic licensing in number, from 3,075 to 1,525. Furthermore, automatic licensing is now only available in sea trade. In border trade, the import of all goods is subject to non-automatic licensing. There is a 60 days (sea trade) or 30 days (border trade) grace period for goods that previously did not require an import license.

4. Payments for imports in the Sino-Myanmar border trade only by bank transfer

Export and Import Newsletter 10/2023 dated 23 June 2023 ([Burmese](#)) requires bank payments in the Sino-Myanmar border trade from 1 August 2023.

Similarly to the situation in the Thai-Myanmar border trade since 1 November 2022, importers in the Sino-Myanmar border trade may use export income and “other income” (provided that this income was received after 1 January 2023), and the “account balance (RMB)” purchased from a local bank to pay for imports. Payment shall be made by bank transfer.

When applying for an import license, companies must submit the original bank statement and the credit advice issued by their bank to the Department of Trade to show that the income from exports, other income, or funds purchased from a local bank have entered their bank accounts. The Department of Trade will issue an import license for an amount not exceeding the balance of the bank account.

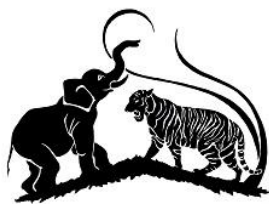
This does not apply to import license applications that were filed up until 30 August 2023. Import licenses issued before that date will become invalid if the goods are not imported until 31 August 2023.

An exporting company may use its export income to import goods itself, or transfer it to another company which may use it to import. The income from these exports may be transferred from one Sino-Myanmar border trade station to another to import goods.

We hope that you have found this information useful.

Sebastian Pawlita
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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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