



# Myanmar Law Updates 2023

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# Outline of Presentation

- Announcements of Ministry of Commerce (**MOC**)
- Announcements of Central Bank of Myanmar (**CBM**)
- Announcements of Myanmar Investment Commission (**MIC**) and Directorate of Investment and Company Administration (**DICA**)
- Announcements of Ministry of Planning and Finance (**MOPF**)



# Announcements of Ministry of Commerce (MOC)

# Announcements of Ministry of Commerce (MOC)

- On July 21, 2023, MOC issued three notifications related to e-commerce.
- **Notification No. 49/2023** – authorized MOC to issue notifications, orders, and directives relating to the **online retail business**.
- **Notification No. 50/2023** - classifies online retail businesses as essential services under the Essential Supplies and Services Law and requires them to register with the DOT within six months of the issuance of the notification (i.e., by January 21, 2024). Failure to register within the specified period will be punishable by imprisonment for six months to three years and a fine of up to MMK 500,000 (approx. USD 238).
- **Notification No. 51/2023** - MOC set out the criteria and requirements for the registration of online retail businesses by entities, business institutions, and individuals, as well as the duties and liabilities of sellers and consumers.

# MOC Notification No. 51/2023

- Registration should be completed via the Department of Trade (DOT)'s online system, fees must be paid digitally, and electronic registration certificates will be issued. Certificates are initially valid for two years and can be renewed.
- The MOC will provide information at a later time on the prescribed forms, certificate format, registration and online fees, and online registration portal.
- In applying for registration, an entity or business institution established under the Myanmar Companies Law, Special Company Act, Co-operative Society Law, or any other existing Myanmar laws must have a website with its own domain name or an online channel with an exact address that is used for online sales and a registered business address within Myanmar.
- Individual applicants must be at least 18 years old, reside in Myanmar, and provide a business operating address within the territory of Myanmar.
- Sellers must disclose which items they sell on the registration system; these can be amended post-certification.

# Announcements related to Trademark

- Trademark Law was enacted on January 30, 2019, and enforced on April 1, 2023.
- 24 Chapters; 106 sections
- First-to-File system

## **Implementation of the new system**

- Ministry of Commerce (MOC)'s Order No. 63/2020 – Old mark re-registration;
- MOC's Notification No. 44/2022 – Trademark forms;
- MOC's Notification No. 17/2023 – Trademark Rules;
- IP Agency's Notification No. 1/2023 – Fees announcement;

## Ministry of Commerce's Order No. 63/2020 (Re-registration of old marks)

Overall approach	Shift trademark system from “ <b>first-to-use</b> ” into “ <b>first-to-file</b> ” under the Trademark Law.
Re-registration of old marks	To refile the mark(s) which has been <b>already recorded under country's old recordation system via Declaration of Ownership</b> and/or <b>already used in Myanmar's market</b> (Section 93(a) of the Trademark Law).
Transitional period for old marks	<b>Only old marks</b> allow to be refiled during the IPD's Soft Opening Period starting from October 1, 2020 for reserving the first filing date of the new system.
Filing Date priority for old marks	<ul style="list-style-type: none"><li>• IPD's Grand Opening date will be accorded as “Filing Date” for those marks re-filed during the IPD's Soft Opening if minimum application requirements were met and fees were paid.</li><li>• All marks filed during the Soft Opening will be given the same “Filing Date”.</li></ul>

# Main Differences between Old and New System

	Old system	New system
System	First-to-use	First-to-file
Substantive Law	No	Trademark Law
Filing	Recording a Declaration of Ownership at the ORD (optional and manual)	Filing an application at the IPD (mandatory and online/ manual)
Examination	No	Yes
Enforcement	Common law	Trademark Law





# Regulations imposed by the Central Bank of Myanmar (CBM)

# Announcements of Central Bank of Myanmar (**CBM**)

Date	Announcements
April 3, 2022	<b>Notification No. 12/2022 and Directive No. 4/2022</b> All individuals, companies, and other organizations in Myanmar are mandatorily required to convert foreign currency income received from abroad to kyat (MMK) within one working day of its receipt since April 3, 2022
April 5, 2022	<b>CBM Directive No. 5/2022</b> Government bodies are exempted from the requirement. <b>CBM Directive No. 6/2022</b> Instructions for bank licensed as authorized dealers (Ads) permitted to exchange currencies were issued. The directive made AD-licensed banks responsible for handling the conversion process by (1) transferring the amount in question to the concerned company's account, (2) converting the amount to MMK at the CBM exchange rate, and (3) depositing it in an MMK-denominated account.
April 20, 2022	<b>Letter No FE 1/69</b> CBM issued an exemption for certain foreign direct investment (FDI) projects from their recently announced requirement to convert foreign currency balances to Myanmar kyat (MMK).

# Announcements of Central Bank of Myanmar (**CBM**)

- The compulsory foreign currency conversion requirements do not apply to -
  1. FDI businesses holding a permit from the Myanmar Investment Commission;
  2. direct investment businesses located in Special Economic Zones;
  3. diplomats, family members of foreign embassy personnel, those with diplomatic relations with Myanmar, and members of the diplomatic missions of foreign embassies in Myanmar;
  4. employees of the United Nations and Myanmar citizens holding laissez-passer who are employed at missions of the United Nations and its specialized agencies in Myanmar;
  5. foreign employees of development agencies carrying out aid activities in Myanmar;
  6. foreign employees with diplomatic status from international organizations, international NGOs, and development agencies; and
  7. Myanmar state-owned airlines or airlines owned by Myanmar citizens.

**(Letter No. FE 1/69)**

# Announcements of Central Bank of Myanmar (**CBM**)

Date	Announcements
April 26, 2022	<p><b>CBM Directive No. 7/2022</b></p> <p>CBM issued an exemption for exporters and importers conducting trade at the China-Myanmar or Thailand-Myanmar border.</p> <p>It extended the currency conversion (THB-MMK or CNY-MMK) deadline to one month, meaning that foreign currency obtained from border trade with Thailand or China no longer has to be converted into Myanmar kyat (MMK) within one day.</p> <p>After export earnings flow into an exporter's account at an AD bank, the exporter can use the foreign currency as desired or sell it to the bank at the official exchange rate within one month. After one month, any unused balance remaining will be sold to the bank.</p>
May 13, 2022	<p><b>SAC's Order 28/2022</b></p> <p>The formation of the FESC was made official with the May 13, 2022, publication of the SAC's Order 28/2022 in the Government Gazette, which appointed six individuals to the new committee.</p>

# Announcements of Central Bank of Myanmar (**CBM**)

Date	Announcements
July 13, 2022	<p><b>CBM Letter No. FE-1/739</b></p> <p>CBM revoked its previous exemption from the foreign currency conversion requirement for companies that are registered with the Directorate of Investment and Company Administration (DICA) and have at least 10% foreign investment. Banks with authorized dealer status are thus no longer permitted to exempt these companies from the CBM's requirement to convert foreign currency transfers and balances to Myanmar kyat.</p> <p>This does not affect foreign-owned companies approved by the Myanmar Investment Commission, or investments in special economic zones.</p>
July 15, 2022	<p><b>Letter No. FE-1/754</b></p> <p>CBM instructed banks with authorized dealer (AD) status to inform the CBM of the balances in foreign-currency accounts belonging to Myanmar companies with up to 35% foreign ownership. This was to be done by 6 p.m. on the same day.</p> <p>In addition, AD banks were ordered to purchase the balances of the relevant foreign-currency accounts and exchange the amounts with Myanmar kyat (MMK). These amounts are to be entered into the bank-customer (bid) and non-trade inward (real time-R) lists by 6 p.m. on July 18, 2022.</p>

# Announcements of Central Bank of Myanmar (**CBM**)

Date	Announcements
August 5, 2022	CBM adjusted the country's official reference exchange rates. The new rate for US dollars is USD 1 to MMK 2,100—up from the previous rate of USD 1 to MMK 1,850.
August 5, 2022	<b>CBM Notification No. 36/2022</b> Only <b>65 percent</b> of income received from exportation needs to be converted into MMK within one day.  An analysis of the regulations laying out the currency conversion requirements mentioned above suggests that the remaining 35 percent of export earnings balance will be converted into MMK if exporters do not use it within 30 days
July 13, 2023	<b>CBM Notification No. 15/2023</b> CBM lowered the percentage of export income in foreign currency that must be converted into Myanmar kyat (MMK) within one day of receipt.  The notification specifies that only <b>50 percent</b> of export income in foreign currency must be converted into MMK at official CBM rates within one day, in accordance with Myanmar's requirement to convert foreign currency transfers and balances.

# Announcements of Central Bank of Myanmar (CBM)

Date	Announcements
October 31, 2022	<p><b>Import/Export Newsletter No. 10/2022</b></p> <p>The Department of Trade in Myanmar's Ministry of Commerce announced that payments for importation at the border are to be made via bank transaction.</p>
December 30, 2022	<p><b>CBM Letter No. FE-1/2861(Ka)</b></p> <p>According to decision of the Foreign Exchange Supervisory Committee meeting no. 78/2022, foreign companies with <b>more than 35% foreign ownership</b> are allowed to use foreign exchange from their foreign currency accounts for themselves or to sell it to banks without having to exchange it to MMK.</p> <p>These companies have to submit the matter to the Foreign Exchange Supervisory Committee for approval if they wish to remit and pay with the foreign currency abroad in a non-commercial transaction.</p> <p>However, these companies are not allowed to trade and export non-value-added agricultural products. Companies that are permitted to trade and export agricultural products are still required to comply with the conversion requirement under <b>CBM Notification No. 36/2022</b>.</p>

# Announcements of Central Bank of Myanmar (**CBM**)

Date	Announcements
<b>December 30, 2022</b>	<p>CBM updated its guidelines on the Thai baht to Myanmar kyat (THB-MMK) direct payment mechanism for Myanmar-Thailand border trade and other flows of capital.</p> <p>The THB-MMK mechanism came into being on March 3, 2022, as a pilot project for border trade in Myawaddy, Tachileik, and other areas approved by Myanmar's Central Committee on Ensuring Smooth Flow of Trade and Goods. In this update, Myawaddy, Tachileik, Myeik, Kawthoung, Mawtaung, and other approved border trading zones are identified as open to the THB-MMK mechanism.</p> <p>Procedures for importing goods via Myanmar-Thailand border trade were also updated in the new guidelines.</p>
<b>August 14, 2023</b>	CBM approved the Thai baht (THB) as a permissible currency for international payments and settlement transactions.



## CBM Reminds Public of Foreign Currency and Exchange Requirements

On August 21, 2023, CBM notified the public that internal residents can only possess amounts of foreign currency equivalent to USD 10,000 for up to six months from the date of receipt. If foreign currency is not used within six months, it must be sold to and exchanged by licensed foreign currency exchangers at the official exchange rate (currently 1 USD to 2100 MMK) or deposited in a bank account.

## CBM urges public not to keep foreign currencies without permission

THE Central Bank of Myanmar yesterday issued a public notice saying those who keep foreign currencies without permissions or licences will be taken action under the Foreign Exchange Management Law.

The CBM issued a similar notice before in its effort to encourage the people not to keep foreign currencies.

The 20 August notice also referred to Paragraph 15 of the Foreign Exchange Management Rules, issued as Order No 7/2014 by the Central Bank of Myanmar dated 30 September 2014 which states "A resident can possess, for up to six months from the date of receipt, US\$ 10,000, or other types of foreign currency in an equivalent amount, if obtained legally by this person.

"If the foreign currency is not used within six months, it shall be sold to, and exchanged by, foreign exchange dealing licence holders at the market price or deposited in a bank account."

The notice also said under Section 9 of the Foreign Exchange Management Law, purchases and sales of foreign exchange can be carried out only by foreign exchange dealing licence holders in terms of cash and traveller's cheques. — GNLM/TH



# Announcements of Myanmar Investment Commission (MIC) and Directorate of Investment and Company Administration (DICA)

## Announcements of Directorate of Investment and Company Administration (DICA)

- On January 17, 2023, DICA issued Directive No. 7/2023 that nominee shareholders and nominee directors are not allowed under Myanmar Companies law.
- On April 1, 2023, additional Reporting Requirements for New Companies were announced.
- Newly established companies must submit the required information to DICA by email within two months of their registration and before submitting their first annual return (AR) to DICA through the Myanmar Companies Online (MyCO) system as required under the Myanmar Companies Law 2017 (MCL).

# The reporting requirements include:

- Proof that the bank account established in the company's name has been credited with the paid-up capital shown in the MyCO system.
- Verification of individuals listed as directors of the company. For directors who are Myanmar citizens, this consists of confirmation from the relevant township police office that the director actually resides at the address stated in the national registration card and the application for company registration (Form A). For directors who are foreign nationals, the required verification is proof of compliance with the Registration of Foreigners Rules 1948 (such as Immigration Form C).
- Confirmation from the relevant township police office that the registered address of the company matches the actual location and that the company is planning to open an office.
- Verification of individuals and entities listed as members of the company. For individual registered members, the requirements are the same as for individual directors (see above). For legal entities that are registered members, the entity's certificate of incorporation must be provided.

# Announcements of Myanmar Investment Commission (MIC)

- The Myanmar Investment Commission (MIC) has announced that companies permitted by or endorsed under the Myanmar Investment Law must submit various supporting documents when applying to transfer foreign currency internationally.

These documents, which must be addressed to the MIC chairman, include the following:

- Prescribed form for transfer of foreign currency;
- Application letter giving a specific reason for the transfer;
- Original board of directors' resolution;
- Audited financial statements for the relevant financial year;
- Up-to-date bank statement of the company;
- Tax assessment confirmation letter for the relevant financial year;
- Tax clearance certificate for the relevant financial year, in the case of liquidated companies; and
- Copy of the updated quarterly performance report using the form prescribed by the MIC.



# Announcements of Ministry of Planning and Finance

# Customs Recordation Rules for Trademark Protection

- On July 14, 2023, Myanmar's Ministry of Planning and Finance issued **Notification No. 50/2023**, which sets out the rules, requirements, and procedures for registered trademark owners to protect their intellectual property rights through customs recordation in accordance with the relevant section of the Trademark Law 2019.
- Right holders can request customs suspension order for suspected counterfeit mark goods
  - Prior customs recordation is not required
- Right holders can apply for customs recordation to prevent cross-border trade of counterfeit goods
  - Valid for two years
  - Renewed every two years: 30 days before expiration

# Goods Excluded from Customs Protection

Goods below the threshold for collecting duties and taxes:

- Transshipment cargo
- Reshipment cargo
- Retention cargo
- Transit trade cargo
- Goods of public interest or in emergency situations imported with the government's approval



# Rules for Offshore Remittances of Foreign Currency

- Myanmar's Ministry of Planning and Finance issued a standard operating procedure (SOP) requiring entities and individuals remitting foreign currency equivalent to **more than USD 10,000 out of Myanmar to clear their tax payments prior to the remittance.**
- The SOP was issued on April 25, 2023, and took effect on May 1, 2023.
- The SOP details three main categories:
  - **Payments for Interest, Royalties, Trademarks, Copyrights, or Services** - must first apply to the Internal Revenue Department (IRD) for evidence that all applicable withholding tax has been paid.
  - **Payments for Goods** - must submit the necessary IRD forms along with evidence that corporate income tax and other applicable taxes have been paid
  - **Salary Payments** - must submit the required form showing that they paid income tax in the applicable fiscal year.



Q & A



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