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LEGAL ALERT

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Myanmar's Draft Foreign Exchange Management Law 2019

Foreign exchange management refers to a method of governing outward remittance such as controlling and facilitating cross border trade transactions, payments and investments for promoting the orderly development and maintenance of foreign exchange. Each country has its own policy for foreign exchange management in controlling the limit of speculation against local currencies.

In Myanmar, foreign exchange is regulated by the Foreign Exchange Management Law 2012 ("FEML 2012") which had repealed the Foreign Exchange Regulation Act 1947. The draft Foreign Exchange Management Law 2019 ("FEML 2019"), which has yet to come into force, is aimed at replacing the FEML 2012.

The main purpose of the law is to improve foreign exchange management by implementing comprehensive foreign economic communication and cooperation. This will help in the development of the socioeconomic conditions of the State.

Foreign currency refers to official currencies from other countries other than Myanmar Kyats while foreign exchange includes:

- foreign currency;
- deposits in intergovernmental financial institutions, central banks, treasuries and commercial banks abroad;
- foreign currency accounts in local banks; and
- securities in foreign currency and instruments issued or guaranteed by foreign governments, foreign financial institutions and intergovernmental financial institutions.

Foreign Exchange Activities

Foreign exchange activities covered by FEML 2019 are as follows:

- payments in foreign currency within the country;
- other payments made in foreign exchange within the country;
- international payments and transfers of foreign exchange;
- sale and purchase of foreign currency or foreign exchange within the country; and
- other foreign exchange activities permitted by the Central Bank of Myanmar.

Holding and Opening Account

Person resident in the State refers to a person who:

- resides in Myanmar for at least 183 days during the preceding 12 months or who do not live as aforesaid but who have their main business in Myanmar excluding foreign embassy personnel and other foreign personnel who perform similar duties;
- Holding and Opening Account
- Person resident in the State refers to a person who:
- resides in Myanmar for at least 183 days during the preceding 12 months or who do not live as aforesaid but who have their main business in Myanmar excluding foreign embassy personnel and other foreign personnel who perform similar duties;

They may hold USD 10,000 or other equivalent amount of foreign currency for up to six months from the date of receipt. If the foreign currency has not been used during the six months, it shall be sold to and exchanged by, foreign exchange dealer license holders at market price or deposited in a bank account.

However, opening up a foreign bank account in another country requires CBM's approval.

Ordinary Account and Large Account Transactions

The provisions regarding ordinary account and large account transactions has not been changed under FMEL 2019. As such, there are no impediments, either directly or indirectly, on payments and transfers for ordinary transactions from in and out of the country.

Regarding large account transactions, CBM is authorised to check all incoming foreign investment fund and will issue their approval or reject the transaction for repatriation. The provisions under FEML 2019 shall not be deemed as a revocation or exception of any provision under the Myanmar Investment Law ("MIL"). If there is any inconsistency between the two, the provisions of the MIL prevails.

Purchase, Sale, Import and Export of Gold and Jewelry

In 2018, the Ministry of Commerce issued Notification No. 7/2018 which granted Myanmar citizens to export and import gold, jewelry, art crafts and utensils that are made of gold.

Under the existing FEML 2012, the purchase, sale, import and export of gold and jewelry is restricted to persons resident in the State who are either in or outside on Myanmar. They are allowed to bring foreign exchange and jewelry for personal use according to regulations issued by CBM.

However, FEML 2019 expanded details regarding the purchase, sale, import and export of gold and jewelry and provides for the definition of gold and jewelry:

- **Gold** includes any forms of gold.
- **Certified fineness gold** means fineness gold bars, bullion and gold coins, which has 99.5% and above of fineness designated by CBM.
- **Uncertified fineness gold** means gold or jewelry, which are not certified.
- **Jewelry** means jewelry made by gold or made by the combination of gold and mineral or gold and gems.

Moreover, FEML 2019 provides for activities that require or do not require CBM approval by the person resident in the State:

Activities which does not require CBM's approval	Activities which require CBM's approval
Personal use of uncertified gold	Ownership of certified fineness gold
Sale and purchase of uncertified fineness gold within the country	Sale, purchase, borrow or lent of certified fineness gold within the country
Export of uncertified fineness gold and jewelry in accordance with CBM stipulations	Import of uncertified fineness gold or jewelry
	Export or import of certified fineness gold
	Sale or purchase of gold by other means within the country other than actual sale or purchase

Administrative Penalties and Appeal

Under FEML 2012, when a foreign exchange dealer who is a license holder violates any stipulations under CBM, they may be imposed with administrative penalties such as warning, limiting operations, fine, permanent or temporary discharge from duty of the responsible officer or staff and withdrawal of the license. The decision can be appealed to the Supreme Court of the Union.

However, under FEML 2019, if the foreign exchange licensees are not satisfied with the decision to impose administrative penalties they may submit an appeal to CBM's Board of Directors' within 30 days from the date of the decision. The decision of the Board will be final and conclusive.

Offences and Penalties

Contrary to FEML 2012, FEML 2019 provides for penalties for offences committed by both foreign exchange dealer license holder and person resident in the State:

Offences		Penalties
Section 44	Engaging in foreign exchange activities without a license	Imprisonment for a term not more than three years or fine not more than MMK500 million or both. Furthermore the assets may be confiscated. (Section 57)
Section 45	Not complying with the regulations when bringing gold, foreign exchange or jewelry in or out of country	
Section 49	Conducting activities regarding to gold and jewelry without the approval of CBM	
Section 53	Manipulating the state economic policy, currency or exchange rate	
Section 46	Failure to remit the income from import in foreign currency to bank account during the stipulated period stated	Imprisonment for a term not more than one year or fine not more than MMK50 million or both. (Section 58)
Section 47	Transfer fund for direct or indirect investment in foreign country without the approval of CBM	
Section 48	Issuing securities in order to take loan, lending money or materials from foreign countries without approval of CBM	
Section 50	Designate, pay or receive in foreign currency for sale, transfer or rent of goods, service or other materials within the country without complying with CBM's rules and directives	
Section 51	Open foreign currency account out of the country without CBM approval or failure to report the expense of the foreign currency account to CBM	
Section 52	Payment or transfer out of country for trading purpose not in accordance with CBM's rules and directives	

Section 54	Engaging foreign exchange activities that are not stipulated in the license issued by CBM	Imprisonment for a term not more than three years or fine not more than MMK500 million or both. (Section 59)
Section 55	Failure to report to CBM any information upon request and disturbing CBM's auditing process done	Imprisonment for a term not more than one year or fine not more than MMK50 million or both. (Section 60)
Section 56	Violation of the rules, regulations, orders and notifications issued under FEML 2019 by foreign exchange dealer license holder	

Conclusion

Foreign exchange management requires every country to control the international trade and protect the illegal movement of capital from the country. With the promulgation of the new FEML 2019, the foreign exchange management has been upgraded to be more specific in managing and promoting the development of foreign exchange in Myanmar. The draft law also enhances the power of CBM to monitor, record and take more effective action in controlling the balance of payments, maintain an overvalued or undervalued rate of exchange and protect the devaluation of the local currency.

If you have any questions or require any additional information, please contact **Thuzar Tin** or the ZICO Law Myanmar partner you usually deal with.

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