

LEGAL PRIMER FOR FOREIGN BANKS OPERATING IN MYANMAR

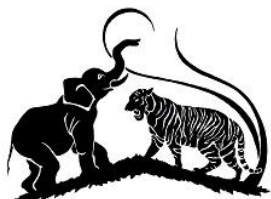
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A. LENDING ACTIVITIES

1. Assessing the financial situation of the debtor

There is currently no operational credit bureau in Myanmar. The first credit bureau is scheduled to start operation end of April 2020, but it is expected to take up to one year for it to collect sufficient and meaningful credit data (<https://tinyurl.com/y7npl5nl>).

A new insolvency law was enacted on 14th February 2020 (Pyidaungsu Hluttaw Law No. 1/2020) which entered into force on 25th March 2020. Previously, the insolvency of individuals was governed by the Yangon Insolvency Act (India Act III, 1909) and the Myanmar Insolvency Act (India Act V, 1920) and that of companies originally by the Myanmar Companies Act (India Act VII, 1913) and later by the Myanmar Companies Law (Pyidaungsu Hluttaw Law No. 29, 2017). However, official insolvencies were rare, and there currently appears to be, to the extent of our knowledge, no publicly accessible central register of insolvencies.



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As, not surprisingly for a frontier economy, financial data provided by a debtor is often unreliable, lenders have to resort to other means to assess the debtor's financial situation, such as:

- searching (online) news resources and social media, in particular Facebook (to many in Myanmar, Facebook is equivalent to the internet);
- requesting the debtor to provide access to its main contracts;
- interviewing suppliers and customers as to whether there have been payment problems in the past;
- interviewing members of the business community and service providers such as law firms whether they are aware of potential issues.

2. Maximum interest rates

The Central Bank prescribes specific maximum interest rates only for MMK loans:

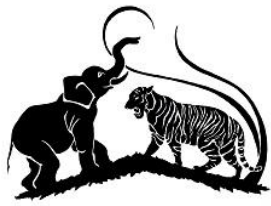
- Secured loans: 11.5% p.a. (Directive No. 4/2020 dated 24th March 2020)
- Unsecured loans: 14.5% p.a. (Directive No. 4/2020 dated 24th March 2020)
- Credit cards: 20% p.a. (Directive No. 14/2019 dated 24th April 2019)

Directive No. 4/2020 defines “**secured loans**” as those secured with land, buildings, gold, gold jewellery, gems, jewellery, savings certificates, government treasury bonds, fixed-time deposits (part-time deposits), bonds, negotiable instruments, a pledge, credit guarantee or other security specified by the Central Bank from time to time.

“**Unsecured loans**” are those secured with other types of security or no security at all.

Directive No. 4/2020 specifically provides that the maximum interest rate includes bank fees. (There is no such specific provision in Directive 14/2019 for credit cards.)

The Usurious Loans Act of 1918 allows a court to relieve a debtor in respect of “any excessive interest”, provided that “the transaction was, as between the parties thereto, substantially unfair”, but does not set a specific interest ceiling.



3. Security

(a) Security on immovable property

(aa) Restrictions with regard to foreign-invested companies and foreign lenders

(aaa) Foreign ownership restrictions

(In this brochure, we use the word “ownership” with regard to all land types to simplify the explanation, although technically, real ownership of land is rare as it only exists for freehold land. All other land types are technically long-term leases from the government with features that render the position of the lessee akin to that of an owner.)

Section 4 Transfer of Immovable Property Restriction Law (Pyithu Hluttaw Law No. 1/1987; exact date not known) and section 14 Farmland Law (Pyidaungsu Hluttaw Law No. 11/2012 dated 30th March 2012) prohibit foreign ownership of immovable property.

An exception was recently introduced for condominiums registered according to the Condominium Law (Pyidaungsu Hluttaw Law No. 24/2016 dated 29th January 2016) and the Condominium Rules (Ministry of Construction Notification No. 267/2017 dated 7th December 2017): 40% of the units in such a condominium may be owned by “foreigners” (this term probably only covers foreign individuals, not companies).

Another exception exists theoretically since the Myanmar Companies Law (Pyidaungsu Hluttaw Law No. 29/2017 dated 6th December 2017) entered into effect on 1st August 2018: As foreign minority ownership up to a threshold of 35% does not render a company a “foreign company”, companies with such minority foreign ownership should be able to own immovable property. However, this is not implemented in practice yet as the authorities dealing with land (first and foremost the Land Record Departments under the Ministry of Agriculture, Livestock and Irrigation) refuse to register any title transfer or other property transaction if there is even the smallest foreign element involved.

Foreign-invested companies therefore usually cannot offer immovable property in Myanmar as security as they cannot own any.



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Foreign-invested companies with investment approval from the Myanmar Investment Commission, a Regional or State Investment Committee or the Thilawa Special Economic Zone Management Committee may, however, have a long-term lease (an ordinary lease, not a technical lease that is akin to ownership) and at least theoretically can provide a mortgage of their leasehold interest as security for a loan.

In this context, it may be worth noting that the land in the Thilawa SEZ is owned by the Thilawa SEZ Management Committee which leased it to the developer (Myanmar Japan Thilawa Development Limited) which, in turn, sub-leases it to the investors.

(bbb) Restrictions on foreign mortgagees

The Transfer of Immovable Property Restriction Law and the Farmland Law prohibit a mortgage of immovable property if the mortgagee is a foreign-invested company.

Theoretically, this prohibition should not apply anymore if the mortgagee is a foreign-invested company whose foreign ownership ratio does not exceed 35% as such a company is not considered to be “foreign” anymore according to the Myanmar Companies Law, in effect since 1st August 2018.

Indeed, there have been two cases so far where foreign banks acquired minority interests in local banks which did not as a result have to give up their real estate portfolio.

Generally, however, authorities dealing with real estate transactions refuse to register any transaction if there is even the smallest foreign element involved.

Because of the constraints in the Transfer of Immovable Property Restriction Law, foreign lenders desirous of taking security on immovable property have so far availed themselves of Myanmar banks acting as security agents. In such an arrangement, the Myanmar bank obtains approval from the Central Bank to act as the mortgagee and promises to transfer, in the event of the borrower defaulting, the proceeds from the enforcement of the mortgage to the foreign lender.



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It should be noted that there has been no enforcement under such an arrangement in practice yet.

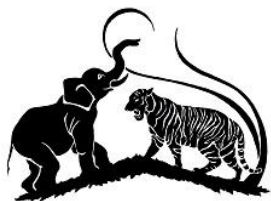
We expect that foreign banks operating in the country will continue to appoint Myanmar banks as security agents in the majority of cases where a loan should be secured by a mortgage of immovable property. However, it may be possible to have different arrangements in the following circumstances:

- It should be possible for a foreign lender to register a mortgage of the lessee's interest in a lease if the lease is approved by the Myanmar Investment Commission, a Regional or State Investment Committee or the Thilawa Special Economic Zone Management Committee (a competitor of ours reports to have achieved this).
- It should be possible to mortgage immovable property to a bank with a minority foreign ownership of up to 35%.
- If immovable property, with the exception of farmland, is owned by a company (which is rare; immovable property is usually owned by an individual), it should be possible to mortgage it to any foreign lender as section 228(b) of the new Myanmar Companies Law declares the provisions of the Transfer of Immovable Property Restriction Law to be inapplicable in such a case (yet untested).
- It should be possible to mortgage a "foreigner's unit" in a condominium according to the Condominium Law to any foreign lender (yet untested).

(bb) Perfecting a security on immovable property

(aaa) Land types

It would be beyond the scope of this brochure to provide a detailed explanation of land-related matters. There are dozens of land-related laws and land types and sometimes, laws and types overlap. The following land types are often used as security for loans:



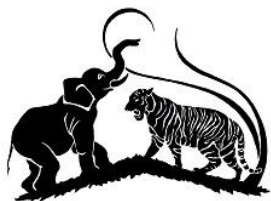
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- **Freehold land** (or “ancestral land”): Quite a rare occurrence; ownership is proven by a corresponding entry in the official land map.
- **Grant land**: Technically, a long-term lease from the government for (typically) 30, 60 or 90 years with terms and conditions that make the lease akin to ownership. Grant land could originally only be used to build one’s own residence (this is still often reflected in the wording of the land grant certificate as the forms have not been updated), but may nowadays also be used for industrial purposes. Ownership is proven by a land grant certificate.
- **Permit land**: Technically, a short-term lease from the government for own residential purposes; may be converted to grant land. Ownership is proven by a “land permit”.
- **Farmland (various types)**: Technically, a long-term lease from the government for the purpose of farming specific crops, with terms and conditions that make the lease akin to ownership. Ownership is proven by a “certificate of the right to use farmland” (often referred to as “form 7”).
- **Converted farmland**: Farmland permitted to be used for other purposes by the respective Regional or State government (non-paddy land) or the Central Farmland Management Body (paddy land). Ownership is proven by the permission (formerly - and colloquially still - referred to as “LaNa 39”) and form 7.

In this context, it may be worth noting that, according to somewhat old but probably still valid case law (Nazir Khan and One vs. Ma Ma Lay, High Court 1948, Myanmar Law Report 1948 p. 353), ownership of buildings can be distinct from ownership of the underlying land.

(bbb) Land due diligence

Any lender accepting immovable property as security should conduct a thorough due diligence as to ownership, disputes, whether the land may be used for the envisaged project, whether the land was acquired in a land grab (which as such would often not be illegal in Myanmar, but



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may give rise to reputational issues abroad) and other issues that may be of importance to the lender.

A land due diligence could be conducted as follows:

- Checking the contents of the land documents provided by the land owner (e.g., are they the documents that prove ownership?; is the purported owner recorded as such in the documents?; how old are the documents?; what may the land be legally used for?; what land history is shown?);
- there is no central, publicly accessible register of mortgages. However, land owners sometimes provide older copies of the official land map (often referred to as “form 105”) and this copy sometimes gives away a clue that the land owner intended to use the land as security. This is because one has to give a reason when requesting a copy from the land authority, and this reason (e.g., “to obtain a loan”) is stated in the copy;
- asking the land authority whether the land documents provided by the purported owner match with what is on file;
- asking neighbours and/or the ward administration officer who, in their opinion, is the real owner, and whether they are aware of any ownership disputes;
- asking the court(s) in whose jurisdiction the land is located whether there are any disputes pending that involve the land;
- the local NLD office may be aware of forced land acquisitions in the past.

(ccc) Types of security on immovable property

Non-bank lenders sometimes ask the land owner to sign a so-called special power of attorney (must be registered with the Registration of Deeds Office in whose jurisdiction the land is located; the authorised person must be a Myanmar national). This is a powerful (but obviously, from the land owner’s perspective also very dangerous) security as it allows the lender to simply sell the land without court intervention if the debt is not repaid.



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Typically, however, security is provided by way of a mortgage. The Transfer of Property Act (India Act IV, 1882) provides for several types of mortgages which all have to be registered with the Registration of Deeds Office, with the exception of a “mortgage by deposit of title-deeds” - the most common type of mortgage - which is simply established by the mortgagor depositing the title deed with the mortgagee (section 59 Transfer of Property Act; section 16(c) Registration of Deeds Law 2018).

A mortgage established by a company (also) has to be registered with the Directory of Investment and Company Administration (section 229(a)(iii) Myanmar Companies Law).

A mortgage of an interest in a lease approved by the Myanmar Investment Commission, Regional or State Investment Committee or the Thilawa SEZ Management Committee would require approval from the Myanmar Investment Commission, etc. (section 72 Myanmar Investment Law; section 80(f) Myanmar SEZ Law).

(ddd) Enforcement

In case of a mortgage, the lender would have to sue the borrower for payment and then enforce the winning judgment against the property (expected timeline: 5 years). Realising a mortgage without court intervention is apparently not possible, at least local banks do not seem to make such an attempt.

(b) Security on movable property

(aa) Pledge

A “pledge” in the term’s strict meaning requires the lender taking possession of the pawn (section 172 Contract Act 1872) and is therefore usually not a suitable security for a bank loan. The lender has the right to sell the pawn without court intervention if the debt is not repaid (section 176 Contract Act).

(bb) Hypothecation

Hypothecation is the use of a movable asset as security for a loan with the owner of the asset retaining title and possession. Hypothecation would occur if,



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e.g., a bank granted a loan to a factory owner for the purchase of a machine and the machine served as security for the loan.

The concept is in principle recognised by Myanmar law (as can be seen from the definition of “actionable claim” in section 3 Transfer of Property Act which excludes “a debt secured ... by hypothecation ... of movable property”), but, unlike mortgages and charges of immovable property, not defined or regulated. Published case law seems to be concerned with the stamp duty implications of instruments of hypothecation only, without shedding light on how an instrument of hypothecation is established or enforced.

If registered vehicles serve as security, the secured lender would usually request possession of the vehicle’s ownership book.

Registration of an instrument of hypothecation with the Registration of Deeds Office is not compulsory. We see no merit in voluntary registration as the Registration of Deeds Office does not have a searchable database which a potential buyer of, e.g., used machines might be able consult.

If the owner of the asset is not an individual, but a company, the instrument of hypothecation has to be registered with the Directorate of Investment and Company Administration (section 229(a)(v) Myanmar Companies Law; this section refers to hypothecation as a “mortgage”).

As hypothecations are not defined or regulated, we understand that section 10 Myanmar Contract Act applies according to which the parties may agree to any lawful object that they might fancy. We therefore understand that an instrument of hypothecation may contain, e.g., clauses to the effect that the secured lender may, if the borrower defaults on the loan, enter the premises of the owner of the asset, take possession of the asset and sell it without court intervention. (We would, however, strongly recommend to coordinate with the local police station prior to attempting removal of the asset from the owner’s premises as the owner might be tempted to call the police for trespass and/or theft, and it is not sure whom the police would arrest if they are called to what appears to them to be a crime scene and they are not sure whom to believe.)

If the secured lender does not manage to obtain possession of the asset by other means, he would have to institute a civil suit against the asset’s owner for transfer of the asset out of the instrument of hypothecation.



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(cc) Share charge

The shares of a company are movable property (section 60(a) Myanmar Companies Law). A share certificate is *prima facie* evidence of title (section 89(a) Myanmar Companies Law), although this may not amount to much in practice as share certificates are “privately” created and not registered.

In order to create a share charge, the shareholder should (from the secured lender’s perspective) ideally do the following:

- Sign a security agreement;
- hand over the share certificate;
- sign an undated “instrument of transfer” (commonly referred to as “share transfer form”), section 83(e) Myanmar Companies Law;
- procure an undated, signed resolution of the board of directors approving the share transfer (section 83(f) Myanmar Companies Law);
- hand over the register of members (and any subsequent amendments thereto) kept by the company (section 90(b) Myanmar Companies Law);
- if the secured debtor wants to appoint a director after the shares are transferred: procure the corresponding signed, undated paperwork;
- hand over the login details of the company’s online MyCo account so that the lender can register the share transfer with the Directorate of Investment and Company Administration (DICA) if the debt is not repaid;
- if the company is an investment vehicle approved by the Myanmar Investment Commission, a Regional or State Investment Committee or the Thilawa SEZ Management Committee and certain minimum thresholds are exceeded, procure undated, signed paperwork required for obtaining approval from the Myanmar Investment Commission, etc. of the share transfer

If the shareholder is a company registered with DICA, it has to register the share charge with DICA (section 229(a)(v) Myanmar Companies Law).



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If all of the above is done, the secured lender should at least theoretically be able to realise a share charge without court intervention if the debt is not repaid by simply transferring the shares to its name.

(dd) Charges on property of a company

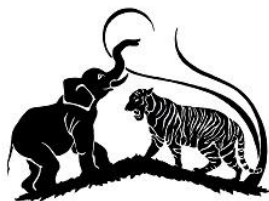
The Myanmar Companies Law provides for a registration requirement for the following types of security (section 229(a)), so it should be possible to create them by a corresponding security agreement and registration with DICA. We suppose that realisation would require court intervention, with the theoretical exception of a share charge.

- A mortgage or charge for the purpose of securing any issue of debentures (possibly not so relevant for the purpose of a bank loan);
- a mortgage or charge on uncalled share capital of the company (dto.);
- a mortgage or charge on any immovable property wherever situated, or any interest therein;
- a mortgage or charge on any book debts of the company;
- a mortgage or a charge, not being a pledge, on any movable property of the company except stock-in-trade; or
- a floating charge on the undertaking or property of the company.

(ee) Assignment of rights

The “transfer of an actionable claim” is regulated in section 130(a) Transfer of Property Act and requires an instrument signed by the transferor. A transfer contingent on the debt not being repaid is possible (section 23 Transfer of Property Act).

As such, it should be possible to realise this security without suing the debtor for payment first by notifying the debtor of the transferred claim (section 131 Transfer of Property Act) and, if the debtor of the transferred claim does not pay, suing him.



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(ff) Assignment of licenses

The assignment of a license would require the approval of the license issuing body which is unlikely to be granted. As a matter of fact, the terms and conditions of a license usually prohibit the transfer of the license. A notable exception exists for telecom-related licenses, section 23(c) Licensing Rules, but again, regulatory approval would be required.

(c) Other types of security

(aa) A **contract of guarantee** is a contract to perform the promise, or discharge the liability, of a third person in case of his default. Guarantees are extensively regulated in sections 126-147 Contract Act 1872 and very common. They are enforced by (i) suing the guarantor (called “surety”) for payment in case of the principal debtor defaulting and (ii) enforcing the winning judgment against the guarantor. It is not necessary, in the absence of any provision in the guarantee to the contrary, to sue the principal debtor first (section 137 Contract Act 1872).

(bb) A **project bank account** may serve as an efficient security if the financed project is expected to generate good cash flow. In case of a non-resident lender, a Myanmar bank could act as security agent. Revenue from the project would be paid into a bank account provided by the security agent from which the security agent would (re-) pay the loan and interest.

(cc) **Step-in rights** enable a financier to take over a mismanaged business in the hope of turning it around. A lease agreement could, e.g., contain a clause to the effect that the lessor acknowledges that the lessee may obtain financing from third parties and allows the lessee to offer to such third parties to step into the lease agreement in the place of the lessee with all rights and obligations of the lessee. Whether such step-in rights can be negotiated depends on the case; we understand that government entities (if they lease out land) are not amenable to such a proposition.

Changing the lessee would require approval of the Myanmar Investment Commission, a Regional or State Investment Committee or the Thilawa SEZ Management Committee (section 72 Myanmar Investment Law; section 37 SEZ Law).



4. Stamp duty

While many jurisdictions have abolished stamp duty or greatly reduced its scope of application, the institute is as alive and well in Myanmar as when it was introduced by the Stamp Act (India Act II, 1899).

Instruments listed in Schedule I to the Stamp Act (basically, every contract or other document used in commerce) have to be revenue-stamped, either before or on the day of signing (section 17 Stamp Act) or, if the instrument is entirely signed outside of Myanmar, within 3 months after its receipt in the country (section 18(1) Stamp Act).

Unstamped or insufficiently stamped instruments are not admissible as evidence in court (or before any other authority, with the exception of the police) and may theoretically be impounded (section 33(1) Stamp Act).

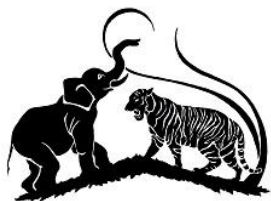
With regard to cross-border loans, the Central Bank recently introduced a policy of disallowing the transfer of funds from Myanmar to a foreign lender to repay the loan and pay interest if the loan agreement is not sufficiently revenue-stamped.

The penalty for not, insufficiently or belatedly stamping an instrument is three times the deficient amount (plus, of course, the deficient amount itself), sections 35(a), 40(l)(b) Stamp Act as amended on 26th November 2019. Additionally, a (criminal) fine of up to Ks. 500,000 might theoretically apply (section 64(c) Stamp Act).

The stamp duty for most instruments is of a nominal amount only. However, some instruments are taxed at a percentage of their value which sometimes results in significant exposure.

Unfortunately, loan agreements fall within the latter category, at least in the opinion of the tax authorities. They are in practice of the opinion that any loan is a “bond” (no. 15 Schedule I) and should attract stamp duty of **0.5% of the loan amount**. We and other advisors think that this would often not square with the wording of the Stamp Act, Schedule I and the IRD’s own internal guidelines, but all protests so far seem to have been in vain.

A bank loan usually involves a whole package of transaction documents, including, apart from the loan agreement itself, the security agreements and other documents. As such, each instrument would separately attract stamp duty. However, the tax authorities seem to be of the opinion - apparently based on section 4(1) Stamp Act, although this section’s wording does not fully capture the situation in case of a loan - that only the principal instrument (i.e., the loan agreement) has to be stamped with 0.5% of the loan amount and the remaining agreements with Ks. 100.



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If instruments are executed in counterparts, the counterpart only attracts stamp duty of Ks. 100 (no. 25(b) Schedule I).

5. Withholding tax

A withholding tax of 15% applies to interest payments to non-resident foreigners (Ministry of Planning and Finance Notification No. 47/2018); treaty relief may be available.

A foreign bank with a branch in Myanmar is considered to be a non-resident foreigner as it is not a company formed under the Myanmar Companies Act (now Myanmar Companies Law), section 3(k)(ii) Income Tax Law 1974.

However, interest payments made to the Myanmar branch of a foreign bank are exempt from withholding tax by virtue of Ministry of Planning and Finance Notification No. 47/2018 if the branch files tax returns and is assessed on its Myanmar income.

6. Cross-border loans

Cross-border loans require prior approval from the Myanmar Central Bank. The most recent approval criteria are listed on the CBM's homepage: <https://www.cbm.gov.mm/content/2066>

B. FOREIGN CURRENCY CONTROL

Foreign currency transactions are regulated by the Foreign Exchange Management Law (<https://tinyurl.com/y7b5y5ww>) and the Foreign Exchange Management Regulation (Central Bank of Myanmar Notification No. 7/2014 dated 30th September 2014).

The draft of a new Foreign Exchange Management Law was introduced into parliament in December 2019, but has not been enacted yet.

In particular the Foreign Exchange Management Regulation (please find a translation on our homepage: <https://tinyurl.com/ybbfggn5>) is important as it instructs banks in detail - although possibly not always in an easy-to-understand way - how to deal with, record and report the various types of foreign currency transactions that occur in the course of their business.

There is a somewhat gray area concerning domestic payments in a foreign currency, and we reprint in the following what we wrote about it in our newsletter on 8th January 2017:



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"It is not on the homepage of the Central Bank, but according to the Myanmar Times (<http://tinyurl.com/jabqw5w>), the Central Bank re-issued, on 3rd January 2017, an instruction from May 2015 as 'people didn't abide by it.'

In this instruction (Letter No. MaBaBha - 1/111 (FEMD)/(904/2015), the Central Bank requests "the relevant ministries and region and state government organisations to direct, as necessary, their sub-organisations, related government organisations and private businesses and organisations to make payments in Myanmar kyats and refrain from specifying the price for making sales or purchases or providing services in a foreign currency."

The wording of this instruction is not very clear, but our understanding of the Central Bank's policy is as follows:

(a) Payments by bank transfer

Domestic and inbound payments by bank transfer in foreign currency are not restricted. Restrictions exist with regard to outbound payments: Such payments are only possible for certain purposes, such as the repatriation of profits, the repayment of a Central Bank approved loan and the transfer of up to USD 10,000 for travel expenses or medical expenses.

(b) Cash payments

Section 8 of the Foreign Exchange Management Law (2012) technically prohibits domestic cash payments in foreign currency: "The domestic payment and transfer with/of foreign currency ... shall only be done through a foreign exchange dealer license holder."

However, according to paragraph 15 of the Foreign Exchange Management Regulation (2014), "a domestic resident can possess, for up to six months from the date of receipt, USD 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 dealer license holders at the market price or deposited in a bank account."

Although a gray area, our position at least so far has been that domestic cash payments up to USD 10,000 are tolerated, but this may not be the policy of the Central Bank anymore."



C. CUSTOMER DUE DILIGENCE; THE MYANMAR FINANCIAL INTELLIGENCE UNIT

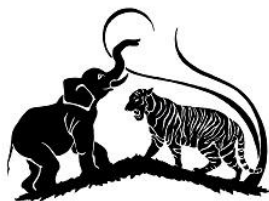
The “know your customer” obligations of a bank are spelled out in detail in Central Bank Directive No. 21/2015 dated 2nd October 2015 (<https://tinyurl.com/ybvn97xc>).

When opening a bank account for a corporate customer, local banks usually request the following items:

- Certificate of incorporation; company extract; constitution (in this context, one still sometimes reads “form of permit”, “form 6”, “form 26”, “memorandum and articles of association” - these are references to documents issued under the old Myanmar Companies Act of 1914 and not relevant anymore);
- cover letter and resolution of the board of directors to open the bank account and authorise the signatories to operate it;
- separate cover letter and resolution of the board of directors to use online banking services;
- copies of the national registration card(s) or passport(s) of the director(s);
- production of the passport(s) and/or national registration card(s) of the signatory/ies; signature specimen;
- some banks require that at least one signatory be a director of the company (sometimes, resident director).

Companies are theoretically required to report details of their beneficial owners to the Directorate of Investment and Company Administration (“DICA”) according to DICA Directive No. 17/2019 dated 15th November 2019 (<https://tinyurl.com/tj3zax7>), but such information is not yet available as the reporting forms are not online yet.

Banks have to report suspicious transactions and transactions above certain thresholds to the Myanmar Financial Intelligence Unit (<https://www.mfiu.gov.mm/en>). The MFIU thankfully has on its homepage English translations of the most important compliance-related legal documents (in particular the **Anti-Money Laundering Law** and Rules; **Countering the Financing of Terrorism Law** and Rules), facilitating the work of foreign compliance officers.



D. FINANCIAL HEALTH AND GOOD GOVERNANCE

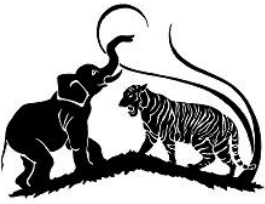
The Myanmar Central Bank issued several directives and regulations aimed at ensuring the financial health and good governance of a bank.

On 25th March 2019, the Central Bank issued directives concerning -

- the qualification of directors and chief executive officers ("**Directive on Fit and Proper Criteria**", <https://tinyurl.com/yxpvghvp>);
- the composition of the board of directors, the duties, powers and responsibilities of directors and other matters concerning directors ("**Directive on Directors of Bank**", <https://tinyurl.com/y5xr9vmj>);
- the qualification, appointment, duties, responsibilities, rights and reporting requirements of external auditors and other matters concerning external auditors ("**Directive on External Auditors**", <https://tinyurl.com/y27wopg7>);
- related party transactions ("**Related Parties Directive**", <https://tinyurl.com/y6njhy2d>);
- the acquisition of an interest of 10% or more in a bank ("**Directive on Acquisition of Substantial Interest**", <https://tinyurl.com/y3bvnbp9>).

On 7th July 2017, the Central Bank issued several notifications aimed in particular at ridding banks from non-performing overdraft loans and strengthening their financial health:

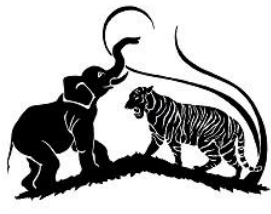
- The **Liquidity Ratio Requirement Regulation** (Notification 19/2017, <http://tinyurl.com/ycf6pvsa>) obliges all banks to maintain a minimum liquidity ratio of 20%, calculate the liquidity ratio position daily and report weekly to the Central Bank (latest amendment by [Directives 7/2020](#) and [11/2020](#));
- the **Large Exposures Regulation** (Notification 18/2017, <http://tinyurl.com/yajchaut>) prohibits banks from taking on a financial exposure of more than 20% of its core capital in respect to a single counterparty or group of connected counterparties and contains certain other restrictions;
- the **Asset Classification and Provisioning Regulations** (Notification 17/2017, <http://tinyurl.com/y8wvx5qp>) classifies loans as "standard", "watch", "substandard", "doubtful" and "loss" depending on the number of days past due date. A loan whose repayment is still



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pending more than 180 days past due date is considered lost; the bank has to set aside funds equivalent to 100% of the loan to make up for the impairment;

- the **Capital Adequacy Regulation** (Notification 16/2017, <http://tinyurl.com/y6uyp32s>) provides for certain capital buffers to capture risks.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

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:

- Sebastian Pawlita, Managing Director
Phone: +95-9-262546284 (English)
E-Mail: sebastian@lincolnmyanmar.com
- Nyein Chan Zaw, Director
Phone: +95-9-790488268 (Myanmar)
E-Mail: nyeinchanzaw@lincolnmyanmar.com

Office address: La Pyi Wun Plaza, Room 409 (4th Floor), 37 Alan Pya Pagoda Road, Dagon Township, Yangon

Web: www.lincolnmyanmar.com