



## A Guide to Doing Business in Myanmar

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# Transactional Banking, Rules on Foreign Exchange and Repatriation of Funds in Myanmar

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**B**anking in Myanmar is not easy. This is a cash based economy. Banks are not nearly as involved in commercial transactions as in most other countries. Credit cards are still not commonly accepted and it was only earlier this year that ATM machines arrived. Visitors still often bring in large sums of cash for their expected expenses, and the cash notes better be crisp U.S. dollars or forget about exchanging it into Myanmar Kyat!

## TRANSFER OF MONEY INTO MYANMAR: LOGISTICAL CONSIDERATIONS

For many years, international transactions requiring bank money transfers were almost impossible. This was in part due to the sanctions imposed by the U.S., the EU, Canada and others, which prevented international foreign banks from transacting business with Myanmar banks.

For the most part this factor has been removed. The U.S. has removed four Myanmar banks (Asia Green Development Bank, Ayeyarwady Bank, Myanma Economic Bank and Myanma Investment & Commercial Bank) from the Treasury Department's Specially Designated Nationals, or SDN, List and U.S. banks (and those with connections to the U.S., thus mostly all international banks) can now conduct business with these four Myanmar banks.

Although most sanctions have been removed, most large international foreign banks are still not for example wiring funds into Myanmar. Some regional banks are wiring funds into Myanmar. For the large international banks the issue may be that this new open legal environment is untested, at least in relation to their internal compliance guidelines. This said, it is a common belief that in the near future wiring funds into Myanmar will however become easier and easier.

## TRANSFER OF MONEY INTO MYANMAR: LEGAL CONSIDERATIONS

As with many countries in the neighborhood and/or those that are in relatively early stages of their economic development, Myanmar prefers foreign investment in which a foreign company comes to Myanmar with funds and expertise and opens a business that creates value, such as creating quality employment and infrastructure. As a result, the general rule for foreign investors in Myanmar is that foreign companies must operate through an entity registered in Myanmar (which may be 100% foreign owned, joint venture or branch) in which to conduct their intended business.

This rule generally applies to all businesses in all sectors and whether a company is formed under the new Foreign Investment Law of 2 November 2013 (the "FIL") or the Myanmar Companies Act of 1 April 1914 (the "Companies Act").

Following the issuance of the conditional copy of the Myanmar Investment Commission ("MIC") permit (for a foreign entity investing under the FIL) and the temporary Permit to Trade (for a foreign entity investing under the FIL and the Companies Act), the foreign investor must bring into Myanmar (often referred to the "bring capital") 50% of the minimum capital for such company's formation. To accomplish the transfer, foreign investors would have their international bank wire funds to one of the two Myanmar state owned banks and such bank would hold the funds for the foreign investor to physically come and collect.

This process also documents the transfer and satisfaction of the registered capital (once the second half is wired, which is required within five years after the issuance of the final permit to trade). This is important for a later repatriation upon liquidation of the investment as funds brought into Myanmar that are either not a part of the 'bring in'

capital procedure and/or have not received prior approval from the Central Bank of the Union of the Myanmar (the "CBM") will not receive CBM approval for such funds to be wired outside of the country (see below for repatriation details).

Foreign investors are permitted to open a bank account denominated in a foreign currency or in Myanmar Kyat through any bank that is authorized to perform international banking in order to carry out financial transactions. Note, American companies should open an account with one of the four banks that have been removed from the SDN List. For each deposit of funds the foreign investor must submit appropriate documentation to the CBM for review and approval. With respect to MIC companies, the MIC will also have to approve the deposit pursuant to the FIL.

## REPATRIATION OF FUNDS

The FIL and the Foreign Exchange Management Law (the "FEML") provide for the ability to foreign investors to remit imported capital and net profit (dividends) abroad in a foreign currency, so long as the remittances are made through a bank authorized by the Myanmar Government to perform international banking at the prescribed rate of exchange.

The FEML replaced the stricter early Law that required CBM to provide its prior approval for every foreign currency payment out of the country. The FEML is intended, among other things, to liberalize transfer payments by breaking various transfers into two categories, one that no longer requires pre-approval by the CBM, "current account transactions", and one that still does require pre-approval by the CBM, "capital account transactions".

The "current account transactions" include:

- remittances for trading, services fees, settlement of short term bank loans;

- remittances for payment of interest on loans and net income from investments;
- installment loan payments or depreciation on direct investments; and
- inbound or outbound remittance for family living costs.

The "capital account transactions" category provides that foreign currency may be retransferred abroad only after receiving approval from the CBM. The FEML defines capital account transactions as the account transactions, other than the current account transactions as mentioned above. The repayment of principal for the loan permitted by the Union Government, the grant given to foreign country permitted by the Union Government, and the investment made abroad permitted by the Union Government are considered to be capital account transactions.

Unfortunately the above is all the detail that is currently available as the implementing rules and regulations that provide details to the relevant law have not yet been issued or published. We expect such rules and regulations to be published soon as this is of course a critical issue for all companies investing into Myanmar.

In addition such rules and regulations in Myanmar by law are required to be issued within thirty days of the law being issued – the FEML was issued on 10 August 2012.

In the meantime there is little certainty as to how these provisions are applied in practice. Banking in Myanmar is still not

easy. However, progress has been made and soon you will likely even be able to go to a store and pay with a credit card! For now however you should bring cash. ■

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### Visa Celebrates First Anniversary in Myanmar

*On November 1, Visa celebrated its first year of operations in Myanmar at an event for partners and stakeholders at Yangon's Chatrium Hotel. Pictured are Somboon Krobteeranon (far left), Visa Country Manager for Myanmar and Thailand. Visa has established relationships with eight local partner banks. Visa cardholders can now withdraw cash from more than 250 ATMs, and make payments at more than 600 retail points across the country.*



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