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Central Bank of Myanmar issues Directive on Registration and Operation of Non-Bank Financial Institutions

On 26 January 2021, the Central Bank of Myanmar (the “**CBM**”) issued Directive No. 1/2021 (“**Directive No. 1/2021**”) clarifying the requirements for the registration of Non-Bank Financial Institutions (“**NBFIs**”) in Myanmar. While the registration and operation of NBFIs has been allowed under the Financial Institutions Law (the “**FIL**”), no specific rules have yet been issued for NBFIs, save for this Directive No. 1/2021. Directive No. 1/2021 is thereby made to specifically apply to the following NBFi activities: finance company business, leasing business and factoring business (the “**Covered NBFi Businesses**”).

1. Application Requirements

1.1 Directive No. 1/2021 requires applicants intended to engage in any of the Covered NBFi Businesses to satisfy the following basic requirements:

- (a) The applicant is a company registered under the Myanmar Companies Law,
- (b) The applicant meets the minimum paid up capital as specified by the CBM from time to time,
- (c) Applicant has suitable and sufficient technical skills and organizational arrangements, including proper internal control and risk management mechanisms,
- (d) Applicant has detailed strategy and business plan supported by realistic budget forecast for three years, and
- (e) Directors, senior management and substantial shareholders of the NBFi meets the fit and proper criteria described below.

Notably, neither the FIL nor Directive No. 1/2021 specifically prohibits foreign companies from applying for NBFi registration; in fact, Directive No. 1/2021 recognizes that a local company holding an NBFi registration may become a foreign company, but requires CBM approval before such conversion is completed.

1.2 To engage in the Covered NBFi Businesses, an applicant must submit an application to the CBM that satisfies the following specific requirements:

- (a) Documentary evidence that the applicant is a company incorporated under the Myanmar Companies Law,
- (b) Information evidencing the source of funds for the paid-up capital of the NBFi,
- (c) Identification and description of the type of services proposed to be offered by the applicant,

- (d) Feasibility study and business plan inclusive of a budget forecast for three financial years from the date of the proposed commencement of services,
- (e) Description of the applicant's administrative structure, internal control mechanisms, risk management and accounting procedures which are appropriate, sound and adequate for its operations,
- (f) A description of the applicant's organizational structure, and information of proposed agents, branches and outsourcing arrangements, if applicable,
- (g) Identity of individuals who have direct or indirect interest or holding of 10% or more in the applicant,
- (h) Identity of directors and management personnel of the proposed NBFi,
- (i) Statement verifying that directors, senior management and substantial shareholders of the proposed NBFi are fit and proper,
- (j) Statement that the applicant will comply with and adhere to all applicable laws, including the Anti-money Laundering Law Counter Terrorism Law and any rules, regulations, notifications, directives and guidelines or orders issued there under,
- (k) Statement that the applicant shall pay the registration fee and annual fees as prescribed by the CBM, and
- (l) Any other documents as may be required by the CBM.

Upon the receipt of the completed application, the CBM is to either issue or refuse the application for registration within six months from the date of the receipt of the application submission, or where additional information was requested, from the date of the receipt of the additional information.

2. Doing Business Requirements

2.1 Board Composition and other Qualification

Directive No. 1/2021 requires NBFIs engaging in any of the Covered NBFi Businesses to have a board with at least three directors, and to have senior management that must have experience in finance or other relevant businesses.

Directive No. 1/2021 also specifically disqualifies the following from (A) serving or continuing to serve as senior management of the NBFi, or from (B) being a substantial shareholder of the NBFi:

- (a) any person subject to any investigation or inquiry relating to fraud, deceit, dishonesty or any other improper conduct by any regulatory body, professional association or any other body of similar nature established in Myanmar or outside of Myanmar,
- (b) any person who, subject to such investigations or inquiries, is found guilty thereof; and,
- (b) any person who is of unsound mind, or was declared bankrupt and has not been discharged.

2.2 CBM Approval Necessary

Directive No. 1/2021 prescribes that the NBFi engaging in any of the Covered NBFi Businesses is required to seek the approval of the CBM for the following specific actions:

- (a) any transfer or sale of 10% or more of the voting shares in the NBFi;
- (b) any transfer, sale or disposal of the whole or any part of the business of the NBFi;
- (c) a change in the head office or branches of the NBFi from one township to another;
- (d) opening of new branches or closing of branches of the NBFi;
- (e) changing of the company's name or logo;

- (f) increase of capital, change in share ratio of shareholders, and any changes to the constitution of the NBFi;
- (g) any changes of ownership resulting in the NBFi becoming a foreign company from a domestic company, or ceasing to be a foreign company; and,
- (h) any other matter as may be required by the CBM.

2.3 Other on-going requirements

Directive No. 1/2021 specifies that the NBFIs engaging in any of the Covered NBFi Businesses may charge interest rates and fees prescribed by the CBM, and are also required to display the interest rates, default interest rates, fee and commissions for the loans in a conspicuous manner. All interest thus displayed must be calculated and applied on a “declining balance” basis.

NBFIs engaging in any of the Covered NBFi Businesses are also required under Directive No. 1/2021 to submit annual audited reports and to submit periodic reports on its lending rates to the CBM.

About Kelvin Chia Yangon (KCY)

KCY has been in active operation in Myanmar since 1995, currently with offices in Yangon and Mandalay. KCY is the firm of choice for those seeking to navigate Myanmar’s fast-changing and complex regulatory landscape, a jurisdiction in which KCY has gained in-depth legal expertise from the numerous transactions it has handled.

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