



LEGAL  
PARTNERS  
ACROSS  
ASIA

**Kelvin Chia Yangon Ltd (KCY)**

Level 8A, Union Financial Center, Corner  
of Mahabandoola Road and Thein Phyu  
Road, Botahtaung Township, Yangon.

(951)8610348/8610349

[csg@kcyangon.com](mailto:csg@kcyangon.com)

[www.kcpartnership.com](http://www.kcpartnership.com)

---

**KCY Newsletter | Issue No. 69**

18 July 2022

**CBM Issues Instruction on 100% Foreign Investment and Foreign-Local Joint Ventures in Non-Bank Financial Institutions**

On 13 July 2022, Central Bank of Myanmar (“CBM”) issued Instruction No. 8/2022, prescribing regulations on establishing 100% foreign-owned Non-Bank Financial Institutions (“NBFIs”) and conducting joint ventures between foreign and local investors in NBFIs.

The requirements under Instruction No. 8/2022 for foreign financial institutions wishing to establish an 100% foreign-owned NBFIs in Myanmar include the following:

- (i) Registration as an overseas corporation under the Myanmar Companies Law,
- (ii) Evidence of sufficient funds for the remittance of US\$ 10 million as minimum capital and the source of funds, and evidence of tax clearance of the funds issued by the relevant tax authority,
- (iii) Background information of applicant, such as the name of the financial institution, primary businesses, organization chart, directors, shareholding structure, group structure, primary shareholders and parent company’ shareholders, and if it is a foreign financial institution already existing in Myanmar, including information of the previous three years’ operations and information of the shareholders holding at least 10% of the shares of the applicant,
- (iv) At least 3 years of experience as a financial institution and audited financial statements of previous 3 years,
- (v) Current investments, assets and affiliated organizations in Myanmar, if any,
- (vi) Evidence of whether there’s any adverse records related to the applicant, such as being subjected to investigation, subjected to a revocation or suspension of license,
- (vii) Recommendation from the relevant authority for the applicant financial institution for the establishment of an NBFIs in Myanmar by the applicant,
- (viii) 3 years business plan, including management plan and risk management plan, and
- (ix) Information of the proposed NBFIs’ directors, and management personnel.

The requirements under the Instruction No. 8/2022 for foreign financial institutions wishing to conduct a joint venture in an NBFIs include the following:

- (i) Draft joint venture agreement including the proposed share ratio and information on shareholding structure,
- (ii) Explanation of the commercial rationale for the joint venture,

- (iii) Business plan including the implementation timeline, and proposed business activities
- (iv) Background information of the organization, such as the name of the financial institution, primary businesses, organization chart, directors, shareholding structure, group structure, primary shareholders and parent company' shareholders, and if the proposed foreign investor in the joint venture is a foreign financial institution already existing in Myanmar, including information of the previous three years' operations,
- (v) Evidence of whether there's any adverse records related to the applicant, such as being subjected to investigation, subjected to a revocation or suspension of license, and
- (vi) Information of the proposed NBFIs directors, and management personnel.

Unlike the requirement for 100% foreign-owned NBFIs however, the Instruction No. 8/2022 does not specify a minimum capital requirement for NBFIs conducted as a joint venture between local and foreign investors.

The Instruction No. 8/2022 stipulates that the CBM is to revert with its decision on whether to approve the NBFIs registration within six months from the date of the receipt of application, and if the application is rejected, to state the reason for its refusal in its response to the applicant.

In accordance with the Instruction No. 8/2022, a 100% foreign-owned NBFIs and a NBFIs established as a joint venture is required to seek the approval of the CBM for the following activities:

- (i) Relocation of its main office or branches,
- (ii) Change of directors,
- (iii) Change of constitutional documents,
- (iv) Transfers of at least 10% of its voting shares,
- (v) Sale or transfer of part or whole of the business,
- (vi) Opening of new branches or closing of existing branches,
- (vii) Changes to the name or logo of the NBFIs,
- (viii) Changes to capital, share ratio between shareholders or changes to the board of directors,
- (ix) Changes to the NBFIs share ownership resulting in the company becoming a local company, or ceasing to be a foreign company, and
- (x) Other changes that the CBM deems to require its approval.

The Instruction No. 8/2022 also stipulate that the approved NBFIs is required to submit audited financial statements to the CBM on an annual basis.

### **CBM Issues Instruction to Foreign Exchange Authorized Dealer License Holder Banks on Suspension of Approved Offshore Loan Repayments**

On 13 July 2022, the CBM issued an instruction to banks holding a Foreign Exchange Authorized Dealer License ("AD Banks") to inform their clients who are companies and organizations that have obtained an offshore loan to negotiate with the respective offshore lenders to be able to amend the loan repayment schedules in order to temporarily suspend the repayment of principal and interests on the offshore loans. The instruction letter from the CBM did not specify a fixed period within which such repayments are to be suspended, or if the AD Banks are to suspend processing of the offshore loan repayment transactions from the date of the issuance of this instruction.

Given the ambiguity, further updates and clarification instructions are expected to be issued by the CBM.



## CBM Issues Instruction to Foreign Exchange Authorized Dealer License Holder Banks on Conversion of Foreign Currency Balance of Companies with up to 35% Foreign Ownership

Subsequent to the revocation of the exemptions from the foreign currency restrictions under Notification 12/2022 for companies with at least 10% foreign ownership on 13 July 2022, such companies became subjected again to the following foreign currency restrictions issued under Notification 12/2022 on 3 April 2022:

1. Requirement to convert foreign currencies received into its accounts from abroad within one business day,
2. Requirement to seek the approval of the Foreign Exchange Supervisory Committee for any outward remittance of foreign currency, and
3. Subject to further instructions from the CBM, conversion of existing balances of foreign currency prior to 3 April 2022 into Myanmar Kyats.

With respect to the conversion of existing foreign currency balances, on 15 July 2022, CBM issued instructions to AD Banks ("**15 July CBM Instruction**") requiring conversion of foreign currency in the accounts of companies with up to 35% foreign ownership into Myanmar Kyats, and to report to the CBM on the status of the conversion by 18 July 2022. With the 35% foreign ownership threshold specified in the 15 July CBM Instruction, the balances of the foreign currency accounts of companies that are not categorized as a "foreign company" under Myanmar Companies Law ("**MCL**") (defined under the MCL as "a company incorporated in the Union in which an overseas corporation or other foreign person (or combination of them) owns or controls, directly or indirectly, an ownership interest of more than thirty-five percent") would be required to be converted into Myanmar Kyats.

For companies with more than 35% foreign ownership however, while the foreign currency restrictions under Notification 12/2022, such as the requirement to convert foreign currencies received into its accounts from abroad within one business day and the requirement to seek the approval of the Foreign Exchange Supervisory Committee for any outward remittance of foreign currency remain applicable, the 15 July CBM Instruction has not required the conversion of their existing foreign currency balances into Myanmar Kyats.

For companies exempted from the Notification 12/2022 under the CBM Letter FE-1/69 dated 20 April 2022, such as foreign direct investments with the approval of the MIC, companies operating inside the special economic zones, state-owned and citizen-owned airlines however, the requirements under Notification 12/2022 specified above, including the requirement to convert existing foreign currency balance into Myanmar Kyats under 15 July CBM Instruction are not applicable.



## Our Senior Lawyers



**Cheah Swee Gim**  
Director of Kelvin Chia Yangon  
Senior Partner of Kelvin Chia Partnership  
cheah.sweegim@kcpartnership.com



**Pedro Jose F. Bernardo**  
Principal Foreign Attorney of Kelvin Chia Yangon  
Partner of Kelvin Chia Partnership  
pedro.bernardo@kcpartnership.com



**Khin Leimar Ban Aye**  
Principal Legal Manager of Kelvin Chia Yangon  
Partner of Kelvin Chia Partnership  
klm@kcyangon.com



**Lyra Miragrace Flores Bisnar**  
Principal Foreign Attorney of Kelvin Chia Yangon  
Partner of Kelvin Chia Partnership  
lmc@kcyangon.com

## 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.

## Our main practice areas

Foreign Investments | Incorporation and Company Maintenance | General Corporate and Commercial | Due Diligence | Mergers and Acquisitions | Joint Ventures and Production Sharing Agreements | Investment Funds | Energy/Oil and Gas | Natural Resources/Mining | Banking | Project and Project Financing | Manufacturing | Education | Agriculture | Real Estate | Infrastructure | Construction | Telecommunications | Compliance / Regulatory | Licensing and Permits | Labour and Employment | Immigration | Taxation | Insurance | International Arbitration | Intellectual Property | Special Economic Zones

**Yangon Office:** Level 8A, Union Financial Center (UFC), Corner of Mahabandoola Road and Thein Phyu Road, Botahtaung Township, Yangon.

**Mandalay Office:** Room No. A-3 (2nd Floor) | Win Yin Mon Condo | 67th Street (31st x 32nd Street) | Chan Mya Thar Zan Township | Mandalay.