

Myanmar Financial Institutions Law

March 2016

On 25 January 2016, the Myanmar Parliament passed the Financial Institutions Law 2016 (the **FIL**). The FIL replaces the Financial Institutions of Myanmar Law 1990 (the **FIML**). The FIL provides for more comprehensive regulation of the financial sector in Myanmar, bringing in international standards and practices. The Central Bank of Myanmar (**CBM**) remains the regulator and is given powers to regulate and supervise banks and other financial institutions. The FIL is the latest in a series of new legislation which focuses on modernising and liberalising the financial sector in Myanmar.

A translation of the FIL posted on the CBM's website can be accessed [here](#).

Banks and Foreign Branches

The majority of the FIL concerns the regulation of banks. The term "banks" includes banks licensed by CBM (commercial banks and development banks) and licensed branches of foreign banks (the **Foreign Branches**).

Regulation of Foreign Branches will now be carried out under the same legislation as domestic banks. FIL expressly provides that certain parts are not applicable to Foreign Branches (provisions restricting banks from shareholdings in certain types of companies or holding more than 10% of unimpaired capital funds in one company and restrictions on cross holdings).

Re-issue of bank licences

Under the FIL, all existing banks are required to return existing licences within six months from 25 January 2016 (the date the FIL was enacted). CBM intends to re-issue licences under the new legislation. As yet, we understand that CBM has not accepted the return of any banking licence nor re-issued any new license.

Key issues with the re-issuing procedure appear to be:

1. **Timing:** banks may be required to return their licences prior to the re-issue of new licenses. This

means that both local and foreign banks risk having an interim period without an effective licence in place;

2. **Application requirements:** will licensed banks be required to submit a full suite of application documentation (as per Sections 8 & 9 of the FIL) as if applying for the first time? Alternatively, will existing licensees only be required to comply with the requirements under Section 177 of the FIL which requires banks to provide a list of shareholders, including ultimate beneficial holdings for substantial shareholders or such other information as may be requested by CBM? The FIL does not appear to be entirely clear on this point; and
3. **Applicable provisions during the interim period:** during the period after the date of enactment of the FIL but prior to the issue of a new licence, will banks be required to comply with the significantly more stringent prudential regulatory regime introduced by the FIL?

The perceived ambiguity in the licensing proposals has led to a degree of uncertainty in the local banking industry. To reassure stakeholders in the Myanmar market, CBM together with the World Bank (who have been assisting in the development of the FIL) held a forum to discuss the industry's concerns. One of the messages from that forum was that CBM was keen to work co-operatively with commercial banks to ensure effective compliance. It was also indicated that banks will not be compelled to comply with specific requirements such as reserve ratio requirements during the initial six month period and until new regulations and directives are issued by CBM pursuant to the FIL. However, there do not appear to be any concrete plans to address the uncertainty regarding the 'return and re-issue' process for existing licensees and further guidance will need to be forthcoming from CBM in due course.

We understand that CBM is currently preparing to issue directives, rules and regulations outlining the procedure for the return and re-issuance of licences. Banks must

wait until such directives have been issued before they may begin the licensing return process.

The FIL also sets out clearer procedures for applying for and complying with a banking licence (and the grounds on which CBM may revoke such licence) as well as the procedures for setting up a foreign bank representative office.

Prudential regulation

FIL introduces certain changes to the existing prudential regulation framework:

	FIL	Commentary
Minimum capital (local banks)	K20 billion (approx. US\$15.5 million)	The FIL does not specify the amount of additional capital requirements for a local bank to open an additional branch. The existing requirement is K5 million per additional branch office.
Minimum capital (Foreign Branch or subsidiary of foreign bank)	US\$75 million	As part of the licensing process each Foreign Branch was required to deposit a minimum of US\$75 million (US\$40 million of which was required to be kept in USD and locked-in with the CBM).
Treatment of paid up capital	Divided into tier-1 (core capital) and tier-2 (supplementary capital)	What constitutes tier 1 and tier 2 capital is now set out in primary legislation.
Reserve requirements	25% of net profits annually to be transferred to a reserve account until the reserve fund is equal to 100% of paid-up capital.	Same requirement under the FIML. Under an earlier draft of the FIL there was a proposal to require setting aside 50% of net profits when the reserve funds as a percentage of paid-up capital is 50% or lower and 25% of net profits when the reserve fund is above 50% of paid-up capital until the fund reaches 100% of

		paid-up capital.
Minimum capital adequacy ratio	To be determined by CBM. CBM may require a bank with a subsidiary to calculate and maintain minimum capital adequacy ratio on a consolidated basis.	This was set at 10% of risk weighted assets under the FIML.
Minimum/minimum average liquid assets or assets	To be determined by CBM. CBM may also prescribe minimum amounts of assets to be held by different categories of banks or require different classes of bank to classify certain assets and liabilities differently.	The existing liquidity requirement at 20% of current liabilities would continue to apply until further guidance is given.
Single borrower exposure	Must not lend more than 20% of capital (including reserves) to a single borrower.	This limit was set at 10% under the FIML. This restriction does not apply to State-owned banks.
Further exposure restrictions	CBM has the power to set ceilings on unsecured, partially secured and secured financings of a bank.	Not specified

In addition, under the Central Bank of Myanmar Law 2013 (CBM Law), CBM may set different liquidity and reserve ratios for different types of deposits and similar liabilities and may also determine the method of their computation.

FIL imposes various obligations on banks relating to risk management, Basel III compliance and anti-money laundering. The FIL also sets out restrictions on the type of investments a bank may make.

The FIL also contains provisions on rehabilitation and liquidation of banks.

Permitted Activities for Banks

FIL provides a list of banking activities that a bank may engage in. These include accepting deposits, lending, leasing, conducting foreign exchange, trustee services, providing corporate advice, portfolio management and advice and development banking businesses. The scope of these services operated by a particular bank may be modified by any conditions or restrictions contained in their banking license.

E-banking and mobile banking are listed among permissible banking activities. FIL also provides for new overarching regulation by CBM of electronic banking, e-money and mobile banking services. These are developing services in Myanmar, as online banking was first introduced in 2014.

Banks may also engage in the insurance and securities broking businesses through a separately incorporated subsidiary. Such subsidiaries may require further approvals under relevant legislation.

Information on Shareholders

Substantial shareholders (shareholders holding 10% or more of share capital/votes in a bank) must apply to CBM for approval within six months from the FIL's enactment. CBM has the discretion to impose severe penalties for breach of this requirement – for example, forced sale of shareholding by public auction. CBM has discretion to refuse an application on the grounds that the applicant is not a fit and proper person (if an individual), has directors that are not a fit and proper person (if a corporation) or CBM forms the view that the applicant would exercise significant influence on the bank that would threaten the sound and prudent management of that bank.

The FIL contains carve-outs for the substantial shareholding provisions (for example, for voting shares under an underwriting agreement) but there is no express carve out for Foreign Branches. Therefore it would appear that CBM approvals are also required in respect of substantial shareholders of overseas banks which are operating Foreign Branches.

Banks are also required to provide to CBM with a list of shareholders (including those with a substantial interest), ultimate beneficial owners and further details (as requested by CBM) within one year if requested by CBM.

Business transfers, mergers and change of control

The FIL also updates the change of control approvals under the FIML. Prior written approval of CBM is required for the following:

4. a bank acquiring the business or substantial part of another bank or selling all its business or substantial part;
5. amalgamation or merger of a bank with another bank;
6. a foreign bank acquiring the business or substantial part of another bank in Myanmar or selling all its business or substantial part in Myanmar; and
7. change of control of a bank or its holding company (control is defined with reference to directly or indirectly having the ability to change board composition or holding 20% or more of voting rights).

The FIL also sets out a court procedure for transfer of business between banks. This may provide a useful tool for consolidations of private banks (which is expected by some commentators).

Other regulated entities

Non-Bank Financial Institutions (**NBFI**) are entities that are registered under the provisions of the FIL to engage in the following businesses:

1. finance company (financing the purchase of goods or services);
2. leasing (including hire-purchase arrangements regardless of whether option to purchase);
3. factoring (financing accounts receivable);
4. credit tokens (including credit cards, debit cards, charge cards or stored value cards);
5. money services (including money transmission, cashing of cheques, issuing/managing payment instruments and issuing/selling traveller's checks or money orders); and
6. other activities or credit services prescribed by CBM.

FIL requires that companies wishing carry out NBFI business must first obtain a registration certificate from CBM. Companies who were engaged in NBFI business prior to the enactment of the FIL must obtain this certificate within six months from 25 January 2016, raising the possibility that CBM may change the conditions under which the license is issued. CBM may impose terms and conditions on the NBFI registration certificate and is permitted to issue regulations or directives relating to the governance, disclosure and reporting requirements of NBFIs as well as consumer protection matters. The scope of NBFI businesses is wide and may capture business lines that may not be traditionally associated with financial services. The exact details of regulation of NBFIs will only be known when secondary legislation is produced in this area.

Scheduled Institutions include various statutory entities that provide financial services to specified groups of recipients (for example, Agricultural Bank and the Postal Savings Bank).

Outlook

The FIL works together with other pieces of recent legislation such as CBM Law and the Foreign Exchange Management Law 2012 in providing the framework for the development and regulation the financial services sector in Myanmar.

The full impact of many of the FIL provisions is still uncertain as there have been no rules or regulations published under the new law as yet. The FIL expressly provides that all secondary legislation and notifications and directions issued under the FIML remain in full force and in effect in relation to the persons to whom they apply and will continue to do so as long as they are not inconsistent with FIL.

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