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REGULATIONS FOR FOREIGN BANKS IN SOUTHEAST ASIA

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The rapidly growing middle class in Southeast Asia is bringing with it increased household wealth, increased consumption, and increased investment. As a result, the commercial banking sector has seen a boom in the more economically developed countries of the region—especially in Thailand. A select few foreign banks have also been very successful in Cambodia, Laos, Myanmar, and Vietnam for many years, but as other banks seek to replicate their Thai success in these new markets, the field looks likely to become much more crowded in coming years. Six major Thai banks are active in at least one other jurisdiction in mainland Southeast Asia, with some already operating across them all, and many larger international banks also beginning to take note.

Amid that background, this guide examines the legal frameworks for foreign banks seeking to operate in these jurisdictions, and addresses some current and upcoming developments that investors should note.

CAMBODIA

Jay Cohen, Nitikar Nith, Teo Pastor

Cambodia's legal framework is very favorable for foreign investors seeking to invest in the country's banking sector, as there are no restrictions on foreign ownership. Therefore, banks and other financial institutions can be 100% foreign owned.

Foreign investors and banks may structure their banking investments or expansion in Cambodia by way of a subsidiary, a branch, or a representative office. Subsidiaries and branches are both permitted to engage in banking activities in Cambodia, and, for a subsidiary, a foreign investor could incorporate a bank in Cambodia and own 100% of its shares or acquire the shares of an existing bank. Representative offices, however, are only allowed to conduct market research and other activities that do not generate income or profit.

Cambodian law allows for the formation of commercial banks (which may be structured as either subsidiaries, locally incorporated banks, or branches), specialized banks, rural credit institutions, and microfinance institutions. Commercial banks are legal entities licensed to carry out banking operations, including (1) credit operations for valuable consideration, (2) the collection of non-earmarked deposits, (3) the provision of means of payment to customers and the processing of payments in Khmer riel (KHR) or US dollar, and (4) foreign exchange. Specialized banks, on the other hand, are banks that only operate in one of the above activities (typically lending, and without accepting deposits from the public). Rural credit institutions, also called specialized banks for rural credit, provide small loans in the agricultural sector.

Microfinance institutions (MFIs) provide financial services, such as loans and deposits, to poor and low-income households and to microenterprises. In general, MFIs are not permitted to collect deposits unless they obtain a separate license from the National Bank of Cambodia (NBC).

All banks operating in Cambodia must comply with the minimum capital requirements below.

Type of Bank	Minimum Capital
Commercial bank locally incorporated or incorporated as foreign subsidiary	KHR 300 billion (approx. USD 75 million)
Commercial bank registered as branch of foreign bank	
If parent bank has investment-grade rating	KHR 200 billion (approx. USD 50 million)
If parent bank does not have investment-grade rating	KHR 300 billion (approx. USD 75 million)
Specialized bank	KHR 60 billion (approx. USD 15 million)
Rural credit institution	KHR 200 million (approx. USD 50,000)
Microfinance institution	
Non-deposit-taking	KHR 6 billion (approx. USD 1.5 million)
Deposit-taking	KHR 120 billion (approx. USD 30 million)

Establishing a bank and obtaining a banking license is a two-step application process at the NBC—first, an application for in-principle approval from the NBC, and then upon satisfying certain conditions, an application for final approval. Application review and approval takes approximately six months. If the NBC grants the banking license, this will be published in the NBC bulletin and the Official Gazette of the Kingdom of Cambodia.

LAOS

Dino Santaniello

The main relevant legislation is the Law on Commercial Banks No. 56/NA, as amended, dated December 7, 2018. This addresses a number of issues with regard to operation of commercial banks in Laos.

Minimum Registered Capital

The minimum registered capital for local or foreign commercial banks to set up a bank in Laos does not differ and is currently set at LAK 500 billion (approx. USD 30.46 million), while the minimum registered capital for foreign commercial banks seeking to establish only a branch is LAK 300 billion (approx. USD 18.27 million). In-kind value may account for up to 10% of the registered capital. Capital-in-kind can be immovable property or movable property in Laos used in the operation of the business of the commercial bank.

Internal Governance

A board of directors with at least five members must be created. Members serve three-year terms, and can be reelected for up to three consecutive terms. The board must include at least one external member—someone who is not an employee of the commercial bank and who has no family connections or contractual relationship with, or business benefits related to, a shareholder or executive of the commercial bank. This prohibition extends to other business interests unrelated to the bank. For example, an external member cannot be employed, even on a temporary or ad hoc basis, by a bank shareholder's other company.

Internal governance also relies on three required committees—the Governance Committee, the Risk Management Committee, and the Audit Committee—with the option of creating additional committees if desired. Eventually, a directors' council consisting of the director and the deputy director must also be set up. Appointment and dismissal of executives must receive consent from the Bank of Laos (BOL), which is responsible for supervising commercial banks.

Banking Activities

The law permits commercial banking activities, which generally encompass the typical services provided by a commercial bank (including the sale and purchase of foreign currency), as well as an allowance for the BOL to approve specific activities that are not listed in the law.

A commercial bank investing in another company that is not in securities business, insurance business, or financial business as further discussed below can invest only up to 10% of the registered capital of the commercial bank and cannot end up controlling more than 20% of the total shares having voting rights in the target legal entity.

Commercial banks can either set up their own entity or hold shares in other companies conducting securities business, insurance business, financial leasing operations, or other types of financial business upon the BOL's approval.

Foreign Financing of Commercial Banks

On December 10, 2019, the BOL issued Notice No. 684/BOL prohibiting financial institutions from obtaining loans from foreign legal entities or individuals that are not financial institutions or are not approved by the relevant authority of the country of origin for providing loans.

Microfinance Institutions

Deposit-taking and non-deposit-taking microfinance institutions are regulated separately under the Decree on Microfinance Institutions No. 184/G, dated June 20, 2022. To establish a microfinance institution, the decree requires minimum registered capital of LAK 30 billion (approx. USD 1,830,000) for deposit-taking microfinance institutions, and LAK 200 million (approx. USD 12,163) for non-deposit-taking microfinance institutions. For both types of institutions, foreign investors must hold at least 51% of the total shares.

MYANMAR

Nwe Oo

The Central Bank of Myanmar (CBM), the financial authority for the banking industry in Myanmar, has implemented a step-by-step approach toward modernization and development of the banking industry in Myanmar. This has moved from permitting only local entrepreneurs to set up banks, to allowing foreign bank operators to open bank representative offices, and then to allowing foreign bank branches to provide onshore wholesale banking services. On November 7, 2019, the CBM announced a new round of foreign bank licensing—either a branch license or a subsidiary license—that opened the wholesale banking market to foreign banks with representative offices in Myanmar from the beginning of 2021. Foreign banks with a subsidiary license have therefore been permitted to engage in retail banking from the beginning of 2021.

With a branch license, foreign banks are permitted to engage in onshore wholesale banking business in Myanmar. These branches require a minimum paid-in capital of USD 75 million for operation, of which USD 40 million must be locked-up for two years with the CBM. Under Directive 9/2017 of the CBM, foreign bank branches are also permitted to provide export financing and related banking services for export financing to local companies.

With a subsidiary license, foreign banks with a minimum paid-in capital of USD 100 million are permitted to conduct onshore retail banking activities. This permits the establishment of up to 10 places of business or off-site ATMs—a huge development and major liberalizing step in the Myanmar banking sector.

Existing foreign bank branches have been permitted to convert to subsidiaries since June 2020, provided they have operated as a branch in Myanmar for at least three years.

A prominent change that took effect on January 1, 2020, permits foreign ownership in a Myanmar bank exceeding 35% of the capital of the domestic bank with the approval of the CBM on a case-by-case basis. Equity investment exceeding the 35% cap by foreign banks or financial institutions was previously outlawed by the CBM (under Circular 1/2019). However, the Myanmar Companies Law 2017 states that a local Myanmar company can only accept foreign equity investment of up to 35% without changing the status of the company to be “foreign owned.” Though there has not yet been clarification, it seems likely that, to be consistent with the Myanmar Companies Law, local banks would have to change their status to be foreign banks after accepting foreign investment of more than 35% of the bank’s capital (as calculated after the capital injection).

At present, there are 17 foreign bank branches in Myanmar—including Bangkok Bank Public Company Limited, Malayan Banking Berhad (Maybank) and the Joint Stock Commercial Bank for Investment and Development of Vietnam (BIDV)—and three foreign bank subsidiaries (including Siam Commercial Bank Myanmar Limited).

Throughout 2022, the CBM has implemented a series of rules surrounding the compulsory conversion of foreign currency balances in the country on April 3, 2022. Foreign banks that hold an authorized dealer (AD) license issued by the CBM to deal with foreign exchange operations are required to comply with these foreign currency restrictions and exchange requirements. Additionally, foreign banks with an AD license must have permission from the government's Foreign Exchange Supervisory Committee before performing foreign-currency transfers out of Myanmar.

On July 13, 2022, the CBM issued Directive No. 8/2022 to permit establishment of nonbank financial institutions that are 100%-owned by a foreign institution and joint venture investments in nonfinancial institutions. This is welcome news for foreign investors and foreign financial institutions in Myanmar.

THAILAND

Santhapat Periera, Gvavalin Mahakunkitchareon, Niti Muangkote

Thailand has consistently promoted foreign investment in and the competitiveness of its financial markets by liberalizing the regulatory environment for financial service businesses. Various laws and regulations provide opportunities for foreign investors interested in the Thai financial sector.

Commercial banking business in Thailand is governed primarily by the Financial Institution Business Act B.E. 2551 (2008), as amended (FIBA), which is supervised by the Bank of Thailand (BOT). Commercial banking is described in the FIBA as the acceptance of monetary deposits (including fixed-term) from the public and using the money for provision of or investment in other financial services. Commercial banking business in Thailand requires a license from the Ministry of Finance (MOF) with the advice of the BOT, which will consider issues such as the potential impact of the applicant on the financial and economic stability of the Thai financial institution system; the applicant's stability, risk management, governance, and contribution to Thailand; and the relationship between Thailand and the country where the applicant's head office is located.

Licensed financial institutions must comply with all applicable legal and regulatory requirements, such as reporting obligations and capital adequacy requirements. Noncompliance or fraudulent activity may result in license revocation or other penalties.

Foreign Ownership

Foreign banks may seek to establish their presence in Thailand with a subsidiary, branch, or representative office.

Foreign-owned service businesses in Thailand are generally required to obtain a foreign business license or foreign business certificate, according to the Foreign Business Act B.E. 2542 (1999), as amended. However, in 2017, the Ministry of Commerce included financial institutions and related businesses in a list of types of service businesses that are not subject to these foreign business licensing requirements if they are licensed under other applicable laws. In addition to financial institution business, also covered are businesses incidental to or necessary for the operation of a financial institution business and related businesses in the financial group of the financial institution, such as a commercial banking business, bank representative office, and so on.

Subsidiary

Approval from the MOF must be obtained before a subsidiary of a foreign commercial bank can conduct commercial banking business in Thailand. Prior approval from the MOF is also required for a foreign commercial bank to establish its presence in Thailand as a local public company, with at least 95 percent of the total shares of the company held by the foreign commercial bank. Once incorporated, the public limited company must apply for a commercial banking license using the form prescribed by the BOT.

Currently, a "commercial bank which is a subsidiary of a foreign commercial bank" would be permitted to have no more than 40 service points in Thailand, unless the subsidiary is licensed in Thailand under a free trade agreement that stipulates otherwise.

Branch

A properly licensed branch of a foreign commercial bank may operate in Thailand as a commercial bank itself. In applying for a license in accordance with the FIBA, a foreign commercial bank must present a letter of consent to the application for the branch establishment from the authority in charge of supervising and examining the bank. Currently, licensed foreign commercial bank branches are allowed to open up to three service points in Thailand, unless—similar to the subsidiary—the branch is licensed in Thailand under a free trade agreement that stipulates otherwise.

Representative Office

A representative office of a foreign commercial bank may be established in Thailand by approval of the BOT, which may prescribe additional compliance rules. Representative offices of foreign commercial banks may not accept deposits or money from the public subject to withdrawal but may undertake business activities in Thailand to provide support to their headquarters or other offices. However, generally, the permitted activities are limited. Representative offices cannot conduct any form of financial institution business or other business incidental to or necessary for undertaking commercial banking business.

Examples of activities that can be carried out by a representative office includes gathering customers' financial information, researching the Thai economic and financial situation, and acting as a contact point referring Thai customers to its headquarters or other offices.

VIETNAM

Kim Thi Anh Nguyen, Vinh Quoc Nguyen

Vietnam is fairly open in terms of market access in the banking sector. Foreign investors may set up a commercial presence or purchase shares of an existing financial institution in Vietnam. A new commercial presence may be (1) a representative office, (2) a branch of a foreign bank, (3) a wholly foreign-owned or joint-venture commercial bank, (4) a wholly foreign-owned or joint-venture finance company, (5) a wholly foreign-owned or joint-venture financial leasing company, or (5) a joint-venture microfinance institution.

While both foreign banks and other financial institutions may establish representative offices to carry out activities that do not generate income or profit, only foreign banks are permitted to set up branches to engage in banking activities such as lending, taking deposits, and account opening. Neither representative offices nor branches of foreign banks are considered legal entities, so foreign investors must take full responsibility for the activities of their representative offices or branches.

In theory, foreign investors may establish a wholly foreign-owned commercial bank under Vietnamese law. As of September 30, 2022, the State Bank of Vietnam (SBV) had licensed nine wholly foreign-owned banks. However, the issuance of new licenses for such banks will likely be limited or possibly even discontinued in the future. Thus, foreign banks may find it easier to set up a branch or a representative office.

As for purchasing shares of existing local banks, a foreign investor together with its affiliates must not exceed 20% ownership of the charter capital of a local commercial bank, and the aggregate ownership of all foreign investors in a local commercial bank is capped at 30% of its charter capital. The scope of operation of commercial banks in Vietnam includes a wide range of products and services, from traditional financial products to insurance distribution (namely bancassurance).

In contrast, foreign investors may acquire up to 100% of the shares of a finance or financial leasing company in Vietnam. The company may engage in certain banking activities but cannot take deposits from individuals or provide payment services via clients' accounts.

Microfinance institutions mainly provide services such as taking deposits from low-income individuals and households and micro-enterprises. As of September 30, 2022, there were only four licensed local microfinance institutions in Vietnam.

In order to set up a commercial presence in Vietnam, foreign investors must satisfy, among other conditions, the minimum legal capital requirement as follows:

Type of Presence	Minimum Capital
Representative office	N/A
Branch of foreign bank	USD 15 million
Commercial bank	VND 3,000 billion (approx. USD 120 million)
Finance company	VND 500 billion (approx. USD 20 million)
Finance leasing company	VND 150 billion (approx. USD 6 million)
Microfinance institution	VND 5 billion (approx. USD 200,000)

To engage in banking activities, a foreign credit institution (e.g., banks, branches, and finance/financial leasing companies) must obtain an establishment and operation license upon satisfying conditions on legal capital and so on. The statutory timeline for issuing a banking license is approximately seven months, but in practice it often takes much longer. If the SBV grants the banking license, this will be published on the official website of the SBV and in three consecutive issues of a local daily newspaper (including online news).

CONCLUSION

The countries of mainland Southeast Asia offer good opportunities to foreign banks and investors looking to gain or strengthen their presence in the region. Banks currently in different stages of expansion in these countries—as well as those ready to embark on expansion in the region—should consider the various issues related to setting up, licensing, capital and operational requirements, permitted and restricted activities, and so on, as detailed in this article, to determine the relative ease of market entry and operation versus the potential risks and rewards of doing so. With careful planning and foresight, each of these markets offers attractive opportunities for banking sector operators looking to expand.

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