

asean insiders

series

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Foreign exchange administration



ASEAN flow of funds

The ASEAN Economic Community (“AEC”) set for launch in December 2015 will no doubt see a flood of investments from all corners of the globe – adding to those already pouring into the region. Member States have long been aware of the need to simplify requirements in allowing free movement of capital in and out of its boundaries, while harmonizing exchange control mechanisms within the region towards industrial complementation and economic integration.

Unlike the EU however, laws in the ASEAN region are anything but harmonized. Inconsistent national agendas, regulatory, legal, cultural and economic differences mean that each Member State has differing priorities to address, preventing uniformed rules and laws across the region among Member States.

That being said, the essence of ASEAN is its diversity, and ASEAN Insights endeavors to shed light on these differences. This chapter will focus on the rules and regulations that govern the movement of capital, profits, dividends, etc, in and out (and around!) of ASEAN.

Member States have been taking steps to ensure the freer movement of capital and funds in recent times leading up to the AEC, while also ensuring the soundness of its monetary and financial stability. This is evidenced by

Member States with more fragile economies, leaving room for safeguards that prevent potential macroeconomic instability and risks that stem from the liberalization process.





Because of sensitivities that directly influence monetary and financial stability of these emerging economies, , each Member State has taken its own course, and time in removing and relaxing foreign exchange controls to further promote foreign direct investment and capital market development.





This process is still on-going, which is why there remains a disparity amongst some of the Member States, but the end goal is determined – a uniform set of procedures and regulations that permit the free movement of capital around ASEAN to enhance competitiveness through the creation of a dynamic environment for trade, business and investment activities.

This issue of ASEAN Insights will deal with the current framework regulating the movement of funds in ASEAN, another aspect of ASEAN’s complex but lucrative business environment.



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	 Cambodia	 Indonesia	 Laos	 Malaysia
Governing Legislation	<ul style="list-style-type: none">• Law on Organization and Functioning of the National Bank of Cambodia 1996;• Law on Banking and Financial Institutions 1999;• Law on Foreign Exchange 1997;• Law on Investment 1994 and its amendments (2003); and• Law on Anti-Corruption 2010.	<ul style="list-style-type: none">• Law No. 10 of 1998 concerning Bank;• SK DIR No. 32/37/KEP/DIR dated 12 May concerning Requirement and Procedures of Establishment of Branch office, Sub-Branch office and Representative office of offshore bank.	<ul style="list-style-type: none">• Law on the Bank of Laos 1995, amended in 1999;• FX Decree 2002 on Foreign Exchange and Precious Metals Management;• Instructions on Foreign Currency and Precious Metals Management 2003;• Regulation on Foreign Currency Exposure 2003; and• Investment Law 2009.	<ul style="list-style-type: none">• Financial Services Act 2013 (“FSA 2013”);and• Foreign Exchange Administration (“FEA”) Rules and Notices.
Bank Accounts Available to Foreigners	<ul style="list-style-type: none">• Khmer Riel accounts; and• Foreign currency accounts.	<ul style="list-style-type: none">• Rupiah and foreign currency accounts.	Two accounts mandatory to be opened with a Lao-incorporated Bank: <ul style="list-style-type: none">• To monitor imported funds in foreign currency; and• Licensed business operations. If account is opened with > USD10,000 or equivalent, evidence of source of funds is required. Authorization from the Central Bank is required for withdrawals of >USD10,000 per day.	<ul style="list-style-type: none">• Foreign currency accounts with Licensed Onshore Banks in Malaysia; and/or• Ringgit accounts in Malaysia.
Remittance	<p>No restrictions on transferring foreign currency (profit or capital) in and out of Cambodia except for instances of national security or emergency.</p> <p>The Law on Investment guarantees the right of foreigners to remit currencies abroad for:</p>	<p>There are no restrictions on the transfer of funds to and from foreign countries in USD, but banks must report foreign exchange activity to the Central Bank. The report shall include:</p>	<p>Transfer of funds shall be made through the local banking system and in the type of currency stipulated in the investment license.</p> <p>Foreign currency funds for investment must be declared with supporting evidence to the Central Bank.</p>	<p>No restrictions. Remittance may be:</p> <ul style="list-style-type: none">• By way of conversion of foreign currency to ringgit with Licensed Onshore Banks; or• Through an appointed overseas office of the Licensed Onshore Bank’s banking group.
Repatriation	<ul style="list-style-type: none">• Payment of imports and repayment of principal and interest on foreign loans;• Payment on royalties and management fees;• Remittance of profits; and• Invested capital on dissolution of investment projects <p>Remittance must be transmitted through a licensed bank. Notification to the Central Bank may be required for large monetary activity.</p>	<ul style="list-style-type: none">• Trade activities in goods, services, and other transactions between residents and non-residents;• The position and changes in the balance of foreign financial assets and/or liabilities; and• Any plan to incur foreign debt and/or its implementation.	<p>No restrictions after full payment of taxes, duties and other required fees, except where investment activities are partially or completely closed. Requirements for remittance of profit of a foreign company:</p> <ul style="list-style-type: none">• Application form;• Tax payment certificate; and• Dividend allocation agreement of the board of shareholders. <p>Required documents for transfer of capital of a foreign company:</p> <ul style="list-style-type: none">• Application form;• Capital importation certificate;• Certificate for reduction of business capital or winding up certificate, sale agreement or share-sale agreement or bankruptcy certificate issued by the court.	<p>There are no restrictions provided that the repatriation is made in foreign currency.</p> <p>Remitting banks will be required to sight certain documents to substantiate the application for repatriation.</p>
Foreign Loans	<p>Foreign loans may be obtained, and assets within Cambodia may be used as security.</p> <p>Moveable assets are governed by the Law on Secured Transactions. Immoveable assets are governed by the Civil Code and the Land Law.</p> <p>There is no restriction in making payments for loans taken abroad.</p>	<p>Plans to obtain foreign loans must be submitted to Bank Indonesia. Recipients are required to withdraw its proceeds through foreign exchange banks.</p> <p>The loan must be registered with Bank Indonesia and subsequent movement of funds reported. Assets in Indonesia may be used as security except land.</p>	<p>No restrictions. However, foreign borrowings must be registered with the Central Bank.</p> <p>No legal restrictions against using local assets for securing foreign loans, though such securities will be difficult to enforce.</p> <p>Required documents for the repayment of foreign borrowings:</p> <ul style="list-style-type: none">• Application form for purchase of foreign currency;• Loan agreement with repayment plan; and• Loan importation certificate.	<p>Resident entities are free to obtain any amount of foreign currency borrowing from :</p> <ul style="list-style-type: none">• Licensed Onshore Banks;• Resident or non-resident entities within its group of entities;• Resident or non-resident shareholders; and• Another resident through the issuance of foreign currency debt securities.
Holding Foreign bank accounts	Permissible.	Permissible.	Not allowed unless the approval of the Central Bank has been obtained.	Permissible.
Branch & Representative Offices	<p>Branch and Representative Offices may open:</p> <ul style="list-style-type: none">• Khmer Riel accounts; and• Foreign currency accounts. <p>No restrictions are imposed on remittance of capital or profits.</p>	<p>Branch and Representative Offices may open Rupiah and foreign currency accounts but are subject to reporting on its Foreign Exchange Flow, ie:</p> <ul style="list-style-type: none">• Data on transactions of goods and services;• Transactions between residents and non-residents;• Changes in offshore financial assets/liabilities; and• Offshore loans. <p>Representative Offices however cannot undertake profit generating activities and may only transact in operational costs.</p>	<p>Branch and Representative Offices are deemed “residents” and may open bank accounts as any other entity.</p> <p>Branches may remit and repatriate currencies as an ordinary company.</p> <p>Representative Offices cannot undertake any profit generating activity and may only transact operating costs.</p>	<p>Deemed ‘residents’ under the FSA 2013. Residents are free to open:</p> <ul style="list-style-type: none">• Foreign currency accounts with Licensed Onshore Banks in Malaysia; and/or• Ringgit accounts in Malaysia.• Remittance of profit;• Representative Offices do not undertake profit generating activities and may only transact operational costs;• Branch offices – no restrictions on remittance.

 Myanmar	 Singapore	 Thailand	 Vietnam
<ul style="list-style-type: none"> Foreign Investment Law & Rules 2012 Central Bank of Myanmar Law 2013; and Foreign Exchange Management Law, Rules and Regulations 	<ul style="list-style-type: none"> As of 1 June 1978, the provisions of the Exchange Control Act (Chapter 245) were declared ineffective. 	<ul style="list-style-type: none"> Exchange Control Act B.E. 2485 ("ECA"); Ministerial Regulations No.13/2497. 	<ul style="list-style-type: none"> Ordinance on Foreign Exchange 2005 ("OFX") (amended in 2013); and Decrees and Circulars governing, among others : <ul style="list-style-type: none"> - Obtaining and repayment of foreign loans; - Operation of bank accounts; - Remittance and repatriation of funds.
<p>Two types of accounts with any licensed bank that carries out <i>foreign exchange trading</i>:</p> <ul style="list-style-type: none"> Foreign currency account; Myanmar Kyat account (only if it earns Myanmar Kyats by selling its foreign currency within Myanmar) <p>Currently, 27 banks in Myanmar, being 4 state-owned banks and 23 private banks, are allowed to carry out foreign exchange trading.</p>	<ul style="list-style-type: none"> Foreign current account; Foreign fixed deposit account; Multi-currency savings account; Certain accounts that grant access to specific foreign currencies; and Accounts for USD or EU with flat telegraphic transfer fees 	<ul style="list-style-type: none"> Foreign currency accounts with authorized banks without limit for general purposes. Thai Baht accounts i.e. Non-Resident Baht Accounts for Securities ("NRBS") and Non-Resident Baht Account ("NRBA") for general purposes. 	<ul style="list-style-type: none"> Direct Investment Capital Account in foreign currency and/or Vietnamese Dong for direct investment Current account in local or foreign currency; and Indirect Investment Capital Account in local currency for direct investment.
<p>No restrictions. Remittance can be made from any corresponding foreign bank of the local banks which are licensed to carry out foreign exchange trading.</p>	<p>No exchange control formalities or approvals are required for all forms of capital transfers.</p>	<p>Clause 20 of the Ministerial Regulations No.13/2497 provides:</p> <ul style="list-style-type: none"> Remittance in foreign currency for direct and portfolio investments into Thailand are freely permitted. The proceeds must be sold to an authorized bank or deposited in a foreign currency account with an authorized bank. 	<p>No restrictions if transaction is conducted through Direct Investment Capital Account.</p>
<p>MIC Companies1:</p> <ul style="list-style-type: none"> No restrictions upon termination of business. The Foreign Investment Law provides conditions for transferring funds abroad, including obtaining approval from the MIC. <p>Non-MIC Companies:</p> <ul style="list-style-type: none"> No restrictions on ordinary account transactions. Capital account transactions will be scrutinized by the Central Bank through submitted documents. 		<p>No restrictions or conditions other than the submission of supporting documents to an authorized bank.</p>	<p>Permissible, where all financial obligations to the State has been fulfilled.</p> <p>Vietnamese dong must be converted to foreign currency before remittance, and must be transferred within 30 days of conversion.</p> <p>The tax authority must be notified at least 7 days before transfer for clearance of tax obligations.</p> <p>Investors must also ensure to submit audited financial statements and corporate tax finalization declaration prior to remitting funds.</p>
<p>Foreign loans are available subject to the approval of the Central Bank. MIC companies also require the approval of the MIC.</p> <p>The above authorities will scrutinize applications to charge/pledge local assets as security, as well as applications to make repayments for loans taken from abroad.</p>	<p>Permissible. Singapore offers favorable lending and loan conditions to foreign investors.</p>	<p>At present, there are no restrictions in taking loans from abroad, though it is advised that the loan agreement and transaction be completed abroad.</p> <p>Local assets can be securitized, but charging of immovable property must be in compliance with the Civil and Commercial Codes, and must be registered with the Department of Land.</p>	<p>Foreign loans are only permitted for specified and limited purposes. There are no restrictions on making repayment for such loans, other than submission of documentary evidence of such loan.</p> <p>Land use rights and real property are not allowed to be securitized for foreign loans.</p>
<p>Foreigners are only allowed to open bank accounts abroad subject to the purposes permitted under the FEML.</p> <p>Such companies are required to submit financial reports to the Central Bank on a monthly basis.</p>	<p>Permissible.</p>	<p>Not permissible, unless with the approval of the Central Bank upon submission of relevant and required documents.</p>	<p>Foreign companies are permitted to open bank accounts abroad for the purposes of obtaining offshore loans, or for performing undertakings/ contracts with foreign parties.</p> <p><i>Note : The above is subject to the foreign companies having branches or representative offices abroad.</i></p>
<p>Branch and Representative Offices may open bank accounts as any other company in Myanmar, and may repatriate the same under similar conditions.</p> <p>Representative Offices however cannot undertake profit generating activities and may only transact in operational costs.</p>	<p>Branches and Representative Offices may open bank accounts, and there are no exchange control formalities or approvals required for all forms of payments or capital transfers.</p> <p>Representative Office bank accounts however can only be used to run the cost center operations. Representative Offices cannot conduct any business activities of profit yielding nature.</p>	<p>Branch and Representative Offices are deemed 'residents'. Bank accounts permitted:</p> <ul style="list-style-type: none"> Thai Baht accounts; Foreign currency accounts for foreign currency originating from abroad; and Foreign currency accounts for foreign currency originating from Thai sources. <p>Repatriation is permitted with submission of supporting documents, though Representative Offices cannot carry out profit generating activities.</p>	<p>Branches</p> <p>May open Current Accounts in foreign currency and/or Dong. Branch offices may also open accounts abroad if approved by the State Bank of Vietnam.</p> <p>Representative offices</p> <p>May open Current Accounts in foreign currency and/or Vietnamese Dong. Representative offices cannot undertake profit generating activity and may only transact operational costs.</p>

1. Companies that have obtained a license to conduct business in Myanmar from the Myanmar Investment Commission.

Foreign exchange administrators and available foreign currency assets

Myanmar



(Central Bank of Myanmar)

- Foreign currency cash;
- Instruments payable in foreign cash or payable outside Myanmar;
- Deposits in international governmental monetary organizations, foreign central banks, treasuries and commercial banks;
- Accounts opened in foreign currency at local banks; and
- Securities and instruments specified in foreign currency issued or insured by foreign governments, foreign governmental monetary organizations, and international governmental monetary organizations.

Laos



(The Bank of the Lao People's Democratic Republic)

- Foreign currency deposits

Cambodia



(National Bank of Cambodia)

- Capital flows, including investments;
- Payments instruments or securities denominated in foreign currency; and
- Raw gold, raw precious metals, and uncut precious stones.

Thailand



(Bank of Thailand)

- Equity/portfolio investments abroad;
- Loans to non-residents; and
- Foreign currency deposits.

Vietnam



(The State Bank of Vietnam)

- Any foreign currency and Vietnam dong;
- Cheques, credit cards, bills of exchange, promissory notes, and other payment instruments in foreign currency;
- Government bonds, corporate bonds, term bonds, shares, and other valuable papers in foreign currency; and
- Gold in the form of bullion, bars, granules and plates.

Malaysia



(Bank Negara Malaysia)

- Investment in foreign currency securities;
- Loans to non-residents;
- Foreign currency deposits onshore and offshore; and
- Investments in approved foreign currency products offered by licensed onshore banks, licensed international Islamic banks, and any residents permitted by the Controller of Foreign Exchange.

Singapore



(Monetary Authority of Singapore)

- Deposits;
- Stocks;
- Fixed income instruments; and
- Derivatives.

Indonesia



(Bank Indonesia)

- Foreign currency
- Bank deposits in non-resident institutions; and
- Government securities, bonds and notes issued by non-residents.

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