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PROGRESS REPORT 2016 MYANMAR



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SOME REGULATORY POINTS OF ATTENTION FOR TELECOM M&A AND CONTRACTING IN MYANMAR

Once regarded as one of the world's last remaining frontiers for telecom companies, Myanmar's telecommunication sector has seen a surge in investment in recent years, fuelled by the opening up of the mobile segment in 2014, rise in phone ownership and internet penetration rates.

In 2016, telecommunication sector attracted most foreign investment in Myanmar, according to statistical data released by the Myanmar Investment Commission (MIC), and this trend is expected to continue over the coming years.

As the telecoms sector's long-term prospects remain bright, understanding the telecom contracting process in Myanmar, regulatory requirements and risks associate with it remains key for investors entering this segment. In this client briefing note, we explain ten tips for telecom contracting in Myanmar.

Make it clear who is responsible to get the license in a JV

At present there is no requirement that a company must be a joint venture (JV) company in order to provide telecommunications services in Myanmar. In other words, you can have a 100% foreign-owned telecom

Highlights of this note

- ▶ Make it clear who is responsible to get the license in a JV
- ▶ When you buy or sell shares, get PTD approval first
- ▶ When you are changing the directors, get PTD approval first
- ▶ When you are increasing the capitals, get PTD approval first and mind the deadline
- ▶ When you are reducing the capitals, get PTD approval first
- ▶ PTD approval is required for import of telecommunications equipment (and sometimes export, too)
- ▶ Business in international gateway services? Watch out for shareholding and personnel restrictions
- ▶ New services? Tell PTD
- ▶ Yes, there are rules regulating anti-competitive conduct

company. Nevertheless, should you consider a JV, you should clearly state which party is responsible for obtaining telecom license under the JV agreement. Since obtaining the license is a key part of carrying out telecom business in Myanmar, it can either be set forth as a condition precedent or as a termination event for the JV under the JV agreement.

When you buy or sell shares, get PTD approval first

It is stipulated by the Competition Rules for the Telecommunications Sector that a shareholder transferring over 15% of shares in a licensed company should get approval from the Posts and Telecommunications Department (PTD) before the transfer can take effect. The following table explains actions required to carry out this task:

| Share % | PTD Action Required | Type of Action |
|-------------------|---------------------|--|
| <15% | Yes | De facto approval prior to DICA registration |
| >15% | Yes | Approval |
| Change in control | Yes | Approval |

As stated in the table, “change in control” will require prior PTD approval and it is widely defined under the Telecommunications Law. It not only includes (either direct or indirect) transfer of more than 50% shares, but also the right to appoint a majority of board members and senior executives, as well as decisive power to make management decision for the licensed company. As a result, any instrument or arrangement results with respect to direct or indirect change in control of the licensed company will be subject to PTD approval.

Just in this February, PTD circulated a letter which further strengthens the approval requirement. Any change of information regarding shareholding will now be required to get PTD approval before it is filed with the Directorate of Investment and Company Administration (DICA).

When you are changing the directors, get PTD approval first

A recent letter circulated by the PTD in February 2017 confirms that any information regarding changes to the company should first obtain PTD approval before they are registered with DICA. Such information includes change of directors, shareholders, company name and registered address.

When you are increasing the capitals, get PTD approval first and mind the deadline

Subject to the letter mentioned above, you have to get PTD approval for increasing the capital investment in a licensed company before you can file it with DICA. Such increase of capital also include capital in kind and loan-converted capital.

Given that such increase of capital is required to be filed with DICA within 15 days from the passing of resolution authorising the increase, it should take into account the time for getting PTD approval (and approvals from MIC as well as the Central Bank of Myanmar for foreign capital) in order not to delay the registration with DICA.

When you are reducing the capitals, get PTD approval first

Again, de facto approval from PTD now is required. Since reduction of capital in a company holding a MIC permit will inevitably result in amending its investment proposal, MIC approval is also required. In this context, a prior PTD approval could be used for applying MIC approval and filing with DICA.

PTD approval is required for import of telecommunications equipment (and sometimes export, too)

Although dealing with telecommunications equipment alone may not necessarily require a telecom license, PTD recommendation will be required to secure import permits for telecom equipment. Depending on the nature of the equipment, PTD recommendation is nearly always required for exportation of the equipment as well.

In a supply contract involving telecomm equipment, highlight which party will be responsible for import/export permits of such equipment.

Business in international gateway services? Watch out for shareholding and personnel restrictions

A licensee with a Network Facility Services (individual) license may apply to provide international gateway services. However, Guidelines on



Provision of International Gateway Services states that such a licensee shall not own more than 10% shares in another licensee that has received a license or authorization to provide international gateway services. The Guidelines also forbid such licensees from sharing directors or officers. Directors or officers in such a licensed company can also not hold shares in another licensed company with approval of international gateway services.

If you have a business plan for international gateway services, be aware of the shareholding restriction and leave an exit for yourself in a share purchase agreement. Regarding the personnel restrictions, you may set it as a disqualification criteria of director or officer in the shareholder agreement. You may also wish to do a background check when appointing a director or an officer.

New services? Tell PTD

Telecom licenses in Myanmar come in categories such as NFSI, NFSC, AS

and NS. That category does not say what the licensee is actually allowed to do. That is mentioned in the license application and in the license itself.

Therefore, even when you have been granted a telecom license, PTD must still be notified about the expansion of scope of services, if the newly-added services are under the original license scope. PTD approval is required if it is out of the original license scope or international gateway services.

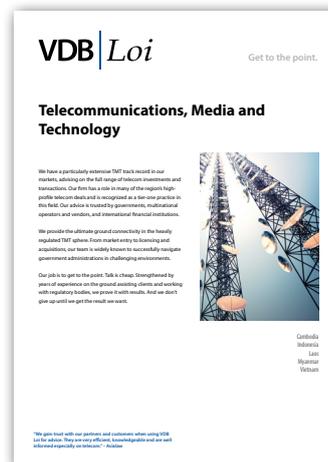
Yes, there are rules regulating anti-competitive conduct

A set of competition rules have been laid down in Myanmar to regulate competition in the telecom sector. These rules cover competition restraining activities such as bundled services, unjustified low-price offer, horizontal/vertical agreement, etc. Furthermore, PTD is empowered by rules to review and approve M&A and takeover transactions in relation to a licensed company, and tariffs imposed by a licensed company.

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CONTACT



Edwin Vanderbruggen
Senior Partner, VDB-Loi
edwin@vdb-loi.com

Edwin is one of Myanmar's most prominent foreign legal advisers. He is widely recognized in Myanmar for his TMT experience, both on the transactional and regulatory fronts. He has advised 2 of the 3 telecom operators in Myanmar, including acting as local counsel for the licensing and market entry of a multibillion dollar greenfield telecom project. He has advised 5 out of 7 tower and fiber companies, and was the first to secure MIC permits for telecom systems vendors. He has a deep understanding of the financing aspects of the telecom industry, having acted for IFIs, commercial banks or corporate borrowers on all of the completed major project finance transactions, including the largest-ever financing deal acting for two DFIs in Myanmar. Edwin currently advises several Myanmar telecom operators, ISPs, infrastructure providers, lenders and vendors. Furthermore, he has provided technical assistance to the telecom regulator, the PTD. He has worked in the region since 1997, and has lived and worked in Yangon since 2012.

YANGON

Level 8, Centrepont Towers
No. 65 Sule Pagoda Road & Merchant Street, Kyauktada Township
T: +95 137 1902 / +95 137 1635
F: +95 124 1238

TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY TEAM



Jonathan Linton
Team Leader
jonathan.linton@vdb-loi.com

AUTHOR



Edith Xingfei Ruan
edith.ruan@vdb-loi.com

NAY PYI TAW

No. S-204, Tha Pyay Kone Ward,
Zabu Thiri Township
T: +95 678 108 091
F: +95 678 108 092