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## M&A IN MYANMAR'S FAST-GROWING MEDIA SECTOR: NOT A DONE DEAL YET

Foreign investments in the media sector have not been active in Myanmar this year. One probable reason could be the lack of clarify over foreign ownership in this sector. In this brief we analyze the restriction on foreign ownership according to the laws and requirements from the relevant authorities in Myanmar.

Notification 15 of 2017 ("**Notification 15**") issued by the Myanmar Investment Commission ("**MIC**") generally requires approval from the Ministry of Information ("**MOI**") for foreign investors to engage in media business, but does not mandate the form of incorporation or percentage of foreign ownership. In parallel to Notification 15, the MOI may impose special restrictions over foreign investment to grant the approval to a particular investor.

It should be noted that one of the foremost reasons for the slow growth of foreign investment in the media sector is the lack of inter-departmental synergy and contradictions. For example, DICA does not allow foreign ownership in the areas of non-print media and media production, while the MOI may allow it on certain conditions. In general, DICA will not contradict with the MOI's decision in the media sector. Therefore securing an approval from the MOI for entry of this sector is crucial.

### Highlights of this note

- ▶ Broadcasting
- ▶ Print media
- ▶ Advertising
- ▶ Production
- ▶ Consulting services in media and advertising
- ▶ Movie theatres
- ▶ Is it possible to buy shares in an existing Myanmar national-owned media company?

### Broadcasting

For broadcasting services, while the State-Owned Enterprise Law of 1989 (the "SOE Law") reserves the right to carry out broadcasting and television services for the government, it allows foreign investment to step in as long as the investor can obtain special permission from the government by establishing a joint venture with the government or under any other conditions; e.g. approval from the MOI. Furthermore, foreign investors can take up to 30% of shareholdings of a company engaging in commercial broadcasting services, according to Sec.48 of the Broadcasting Law of 2015.

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Broadcasting businesses are subject to the MOI approval, in particular for:

- broadcasting direct to home programs;
- broadcasting DVB-T2 programs; and
- cable TV

Having said this, it is pertinent to note that the company regulator, the Directorate of Investment and Company Administration (“DICA”) also has a substantial say (mostly in consultation with the MOI) in the process of approving what business activities can be undertaken by a foreign investor. While the laws and the MOI set out a certain threshold for foreign ownership, DICA may have its own policy as well.

### Print media

Foreigners are **prohibited** in owning magazines and newspaper businesses in **local ethnic languages** including Burmese language, but they can operate magazines and newspaper businesses in a foreign language subject to approval from the MOI and **100% foreign ownership is possible** in this circumstance.

### Advertising

Notification 15 does not set out any restrictions on foreign ownership for advertising service businesses. Depending on the scope of the activity of the business, other restrictions may however come into play. For example, owning billboards requires approval

*“...HIGHLY ACTIVE REGIONAL FIRM WITH A LARGE TEAM, EXPERIENCED IN ADVISING CLIENTS ON A NUMBER OF HEADLINE DEALS, INCLUDING CONSIDERABLE ACTIVITY IN THE TELECOMS SECTOR.”*

*- IFLR1000*

from the **City Development Committees (CDCs)**. While the CDCs generally do not have restriction over foreign ownership and content of the advertisements, they **will not allow certain advertisements.**

### Production

As per the Television and Video Law of 1996, MOI approval will be required for production of video materials. Notification 15 does not provide any foreign ownership restriction in this area, but in practice the MOI may, depending on the case, reserve the activity for joint ventures between foreign investors and local partners.

### Consulting services in media and advertising

Most consulting services in Myanmar are fully open to foreign investment. This is also generally the case for media, marketing and advertising, although there remain some activities foreign

investors may not perform. A case-by-case analysis of the scope of services would be necessary to assess whether special permissions are needed for certain activities.

### Movie theatres

Investment in movie theatres is not restricted for foreigners. In fact, a number of joint ventures have been implemented in Myanmar in recent years. However, approval by the MOI is required. The MOI has not published its policy with respect to foreign ownership in movie theatres, but they may take decisions on a case-by-case basis.

The below table summarizes the restrictions currently imposed by the laws and the MOI and also highlights certain inter-departmental contradictions. Note that they are general restrictions and the authorities may impose special restrictions on a case-by-case basis.



Category	Sub-Category	Notification 15/Other Laws	The MOI
Broadcasting*	Radio Broadcasting	<ul style="list-style-type: none"> <li>Subject to the MOI approval on a case-by-case basis</li> <li>As per the Broadcasting Law of 2015, foreign ownership <b>up to 30%</b> is allowed for commercial broadcasting services</li> </ul>	Foreign ownership <b>up to 30%</b> is allowed
	TV Broadcasting	<ul style="list-style-type: none"> <li>Subject to the MOI approval, in particular for: <ul style="list-style-type: none"> <li>broadcasting direct to home programs;</li> <li>broadcasting DVB-T2 programs; and</li> <li>cable TV</li> </ul> </li> <li>As per the Broadcasting Law of 2015, foreign ownership <b>up to 30%</b> is allowed for commercial broadcasting services</li> </ul>	Foreign ownership <b>up to 30%</b> is allowed
Print Media	Magazines and newspaper	<b>Publishing advertisements on periodicals and newspapers:</b> <ul style="list-style-type: none"> <li><b>In ethnic languages - Prohibited;</b> and</li> <li><b>In foreign languages</b> - subject to the MOI approval on a case-by-case basis</li> </ul>	No restriction for foreign ownership
Advertising	General	Not prescribed	No restriction for foreign ownership
	Owing billboards	Not prescribed	<ul style="list-style-type: none"> <li><b>MOI:</b> - No restriction for foreign ownership</li> <li><b>City Development Committees (CDCs):</b> - Approval from the CDC in the relevant areas will be required. While the CDCs generally do not have restriction over foreign ownership and content of the advertisements, they <b>will not allow advertisements on tobacco, alcohol and drugs</b></li> </ul>
Media Production*		<ul style="list-style-type: none"> <li>Not prescribed</li> <li>As per the Printing and Publishing Law of 2014 and the Television and Video Law of 1996, the MOI approval will be required</li> </ul>	<ul style="list-style-type: none"> <li>No restriction for foreign ownership at the MOI in general</li> <li>For Production and direction of TV commercials and advertisements, <b>a joint venture</b> might be required</li> </ul>
Consulting services in media and advertising		Not prescribed	<b>100% foreign ownership</b> is allowed.
Movie Theatres		Not prescribed	Joint venture on a case-by-case basis

\* DICA has contradiction with the MOI in this area and does not allow foreign ownership.



Last but not least, the Broadcasting Law of 2015 carves out transmission of programs via the internet to be subject to this law and under the domain of the MOI. However, it would be a prudent practice to seek the MOI confirmation in this regard.

#### **Is it possible to buy shares in an existing Myanmar national-owned media company?**

As long as the entire share capital is not owned by the Myanmar company, it is deemed as a foreign company under the Companies Act 1914. Therefore, in

order to effect a transfer of shares in a Myanmar company to a foreigner, the nature of the Myanmar company would necessarily have to be converted to a foreign company. Up until recently, it was administratively impossible for foreigners to acquire shares in a Myanmar company – one that was established and owned exclusively by Myanmar citizens – except through the creation of a new legal entity that was incorporated as a foreign company. Not only was this process time consuming due to the transfer of licenses, assets and employees etc. from the old company to the new, it was also expensive and

filled with uncertainties, with all the tax consequences and formalities involved.

On an application made by VDB Loi in March 2017, DICA implemented a transfer of shares to a foreigner in a company wholly owned by Myanmar citizens and registered as a Myanmar company for the first time. Upon the successful processing of the said application, the Myanmar company was converted into a foreign company. The most important development is that foreigners in Myanmar can now acquire shares in wholly Myanmar-owned companies, subject to case-by-case approval by DICA and the MIC and conditions that apply to this “conversion with continuing legal personality”. In other words, investors no longer need resort to beneficial ownership or other solutions using intermediaries or agents.

Under the July 2017 draft of the Myanmar Companies Law, a “Foreign Company”

is defined 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 the prescribed ownership amount.” The prescribed amount is expected to be 35% of the ownership interest, which means that a foreigner can possibly acquire a stake of up to 35% in a Myanmar-national MFI company without effecting a change in form to a foreign company.

As a number of media business are operated by SOEs, the investor interested in the media sector might consider buying shares in the SOEs and according to the MIL and the MIR, it will need the approval from the MIC to proceed with the investment in an SOE, which also corresponds to the current practice of converting a non-SOE Myanmar company.

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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.

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## TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY TEAM

VDB Loi has created a practice team to support the partners comprising foreign and locally qualified lawyers and regulatory advisers work exclusively on telecommunications, media and technology matters.



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The Telecommunications team is led by Edith Xingfei Ruan. She qualified both in China and in New York. Edith lives in Yangon where she assists our clients in the telecommunications industry. She has extensive experience with the regulatory, financing, and transactional aspects of the TMT space.

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