

## JONES DAY COMMENTARY

# MYANMAR'S NEW TELECOMMUNICATIONS LAW

On October 8, President Thein Sein of the Union of Myanmar signed into effect the Telecommunications Law ("Telecom Law").<sup>1</sup> As part of Myanmar's continuing effort to open up the country to the rest of the world and, in particular, foreign investment,<sup>2</sup> the Telecom Law was clearly drafted with foreign investors in mind. This is unsurprising given the relatively undeveloped current state of Myanmar's telecommunications industry, where less than nine percent of Myanmar's population of 60 million owns a mobile phone,<sup>3</sup> as well as the need to attract foreign technology and know-how to develop this vital and burgeoning sector. Indeed, an express objective of the Telecom Law is to support the modernization and development of Myanmar by means of telecommunications technology.<sup>4</sup>

As one of the last untapped telecommunications markets in the world, the opening of Myanmar's telecommunications market has attracted the attention of many foreign investors. Notably, the recent highly publicized auction of two domestic telecommunications licenses attracted bids from such high-profile global players as Airtel, Axiata, Bharti, China Mobile,

KDDI, Ooredoo, Singtel, Sumimoto, Telenor, Vodafone, and George Soros. On June 27, the Ministry of Communications and Information Technology ("MCIT") announced that Norway's Telenor and Qatar's Ooredoo (also known as Qatar Telecom or Q-Tel) had been awarded licenses to build Myanmar's telecommunications network and run a nationwide wireless network in Myanmar for 15 years.<sup>5</sup>

This *Commentary* summarizes the key provisions of the Telecom Law that may interest prospective foreign investors.

## THE TELECOM LAW

### What Services Are Covered by the Telecom Law?

The Telecom Law sets forth at a high level the licensing regime for the provision of telecommunications services. The range of telecommunications services covered by the Telecom Law is broad and all-encompassing. Such services include (i) the provision or operation of infrastructure or network facilities, (ii) the provision of service for transmission and reception

of information, and (iii) the provision of services by way of transmitting and receiving.<sup>6</sup>

**Who Can Apply for a License, and What Is the Application Process for a Service License?** The Telecom Law was drafted to apply to both local and foreign licensees, with slightly different rules applying to each. A local or foreign applicant who wishes to offer telecommunications services in Myanmar is required to apply for a telecommunications service license with the Telecommunications Department (“Telecom Dept”) of MCIT.<sup>7</sup> Once the Telecom Dept has reviewed the application, the Telecom Dept will submit its recommendation to MCIT. In the case of foreign applicants who wish to obtain a telecommunications service license, approval from the Union Government of Myanmar, instead of MCIT, will need to be sought.<sup>8</sup> Upon the approval of the Union Government and/or MCIT (as applicable), the Telecom Dept will issue service licenses to the successful applicants with a validity period of five to 20 years, subject to reapproval by MCIT upon reapplication. Importantly, it should be noted that providing a telecommunications service without a license carries with it a heavy penalty—imprisonment of up to five years and a fine with no statutory limit.<sup>9</sup>

**How Does the Telecom Law Regulate Telecommunications Equipment?** The Telecom Law provides that any local or foreign person, department, or individual who desires to possess or use any telecommunications equipment will require a telecommunications equipment license. As with the service license, the applications should be made through the Telecom Dept. Notably, however, the Telecom Law provides exceptions for the purchase of telecommunications equipment for the use of the licensee and the possession and use of telecommunications equipment received from a licensee.<sup>10</sup> It appears that these exceptions are targeted at the private use of telecommunications equipment such as mobile phones and the use of telecommunications equipment by contractors who are building the telecommunications network.

**What Are the Terms and Conditions that Attach to Each License?** The Telecom Law is notably thin on the details of the day-to-day application of this statutory regime. Indeed, much will depend on the rules and regulations implemented by the Telecom Dept and MCIT. With significant uncertainty

over regulatory burdens, transparency, and fair competition, foreign investors in this greenfield industry certainly have cause for concern. Encouragingly, however, in an effort to convey neutrality and to bring the telecommunications regulations to international standards, the Myanmar government has agreed to invite consultants from the World Bank to assist the MCIT in establishing the implementing rules and regulations that will underpin the application and enforcement of the Telecom Law.<sup>11</sup> Such implementing rules are projected to be drafted within 90 days from the date the Telecom Law is published.

Because of this top-down approach, it will be mainly left to MCIT and the Telecom Dept to set and enforce all telecommunications regulations. In addition to these rules and regulations, the Telecom Law authorizes MCIT to set a license fee, renewal fee, usage fee, service charge and technology fee, and other fees to be collected from time to time.<sup>12</sup> These fees are not subject to any statutory limitations. In addition to fees, the Telecom Law sets forth certain other statutory duties, including the obligation to observe the Telecom Law and any bylaws, procedures, notifications, orders, and directives issued under the Telecom Law; to observe the relevant code of practice, performance norms, and directives of the MCIT and the Telecom Dept; and to indemnify the State of Myanmar against the consequences of any breach or failure on the part of the licensee.<sup>13</sup> Any person who fails to abide by the prohibitions set forth in the rules, regulations, notifications, orders, directives, and procedures issued pursuant to the Telecom Law may on conviction be subject to imprisonment for up to six months and/or be liable for a fine that is not statutorily limited.<sup>14</sup>

**How Does the Telecom Law Regulate Interconnections?** The Telecom Law does not establish a detailed set of regulations concerning the access and interconnection of network facilities and telecommunications services. The only statutory requirement in respect of interconnections is that interconnections between service providers must be conducted on an equitable and nondiscriminatory basis, and the technical standards and quality of connection should not be lower than that provided in the licensee’s own network.<sup>15</sup> Instead, the Telecom Law grants the Telecom Dept the authority to set the applicable rules and regulations. Importantly, any interconnection agreement between

service providers must be approved by the Telecom Dept.<sup>16</sup> It is unclear whether parties will have the freedom to set interconnection fees or whether the Telecom Dept will step in to establish such fees.

**How Does the Telecom Law Regulate Prices and Promote Competition?** To ensure that telecommunications services will be accessible to all, certain price control mechanisms have been built into the Telecom Law. First, the Telecom Dept is mandated to determine certain consumer protection standards that will apply to service licenses.<sup>17</sup> Second, the Telecom Law requires all licensees to submit a schedule of tariffs to be introduced in respect of any telecommunications service business to the Telecom Dept for the approval of the MCIT.<sup>18</sup> On the anticompetition front, the Telecom Law contains a general prohibition against eliminating free competition in the communications market.<sup>19</sup> In addition, there are specific prohibitions against anticompetitive behavior such as price fixing and cartel formation.<sup>20</sup>

## LAWYER CONTACTS

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## ENDNOTES

- 1 This *Commentary's* summary of the Telecommunications Law (2013, Pyidaungsu Hluttaw Law No. 31, 4th Waxing of Thadingyut 1375 ME, October 8, 2013) is based on an unofficial translation of the document. At present, an English translation is not available on the website of the Directorate of Investment and Company Administration at <http://www.dica.gov.mm/>.
- 2 See *Jones Day Commentary*, "Myanmar's New Foreign Investment Legal Regime" (March 2013) and *Jones Day Commentary*, "Eased Sanctions Widen Doorway to Myanmar Oil and Gas Sector" (August 2012).
- 3 "Myanmar's stated-backed telcos seek backing to take on new rivals," Reuters (Sept. 17, 2013), *available at* <http://www.reuters.com/article/2013/09/17/myanmar-telecoms-idUSL3N0HC1K920130917>.
- 4 Telecom Law § 4(a).
- 5 "Telenor and Ooredoo win Myanmar telecoms licenses," *The Financial Times* (June 27, 2013), *available at* <http://www.ft.com/intl/cms/s/0/bd52d930-df36-11e2-a9f4-00144feab7de.html#axzz2hqkx8C8L>.
- 6 Telecom Law § 5.
- 7 Telecom Law § 5.
- 8 Telecom Law § 8.
- 9 Telecom Law § 65.
- 10 Telecom Law § 13.
- 11 "Myanmar telecoms needs benefactors with 'deep pockets,'" ZDNet (Jan. 28, 2013), *available at* <http://www.zdnet.com/myanmar-telecoms-needs-benefactors-with-deep-pockets-7000010405/>.
- 12 Telecom Law § 15(c).
- 13 Telecom Law § 15.
- 14 Telecom Law § 72.
- 15 Telecom Law § 34.
- 16 Telecom Law § 33.
- 17 Telecom Law § 31.
- 18 Telecom Law § 29.
- 19 Telecom Law § 35.
- 20 Telecom Law § 36.

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