

2024 AVIA Regulating for Growth – Pay TV Matrix for Myanmar

Questions	Pay TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<p><u>Television and Broadcasting Law</u></p> <ul style="list-style-type: none"> Under Myanmar law, the television and broadcasting sectors are jointly regulated by the Broadcasting Development Authority (the Authority) and the National Broadcasting Council (the Council) under the Television and Radio Broadcasting Law (the Broadcasting Law). Since the State Administration Council (SAC) has come into power in February 2021, SAC made two amendments to the Broadcasting Law under SAC Law No 63/2021 and SAC Law No 56/2023 respectively. Notable changes included the new selection method for the Council members and the introduction of monetary and imprisonment penalties for breaching sections 96, 97, 98, 99(a) and 105(a) of the Broadcasting Law. The Council is the regulatory body formed under the Broadcasting Law, comprising of no more than 9 members, and the Chairman and Secretary are nominated by the SAC to monitor and supervise the broadcasting contents. Under the Broadcasting Law, the members of the Council must not hold Government positions or receive any direct or indirect financial income from the media industry. The Council is the main body responsible for implementing and enforcing the Broadcasting Law, which includes the regulation of licence applications and compliance, the imposition of administrative sanctions on non-compliant licensees and assisting the Authority (as defined below) in the development of Myanmar's broadcast industry. Separately, the Authority is an inter-agency body comprising of ministers and representatives from the Ministry of Information (MOI), Ministry of Transport and Communications, Ministry of Home Affairs, Ministry of Defence, Ministry of Religion and Culture and Ministry of Education, the chairman of the Council and private sector representatives. The Authority is responsible for the development and implementation of long-term strategic national broadcasting development plans, policies and technical standards. 	<ul style="list-style-type: none"> None.

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	<ul style="list-style-type: none"> • Generally, the Broadcasting Law allows for appeals to be made against decisions of the Council in relation to its decisions on licence applications and renewals, revocation and suspension of licences and other administrative sanctions within 30 days of the rendering of such decisions. <p><u>Media Code of Conduct</u></p> <ul style="list-style-type: none"> • The Media Code of Conduct (MCC), published by the Myanmar Press Council (MPC), sets out non-binding standards and guidelines to guide media outlet operators, which includes pay TV, in moderating the content of their broadcasts, including advertisements. The MCC does not expressly set out any sanctions to be imposed in the event of non-compliance by media outlets. • The MPC is the body which conducts self-regulation of the media industry. The MPC receives and investigates complaints against media outlet operators which allege that such operators have broadcast content in breach of the MCC. The MPC does not have the power to impose any administrative sanctions or penalties on media operators, but may make public statements censuring media outlet operators which they have assessed to be in breach of the MCC. <p><u>Television and Video Law</u></p> <ul style="list-style-type: none"> • Additionally, under the Television and Video Law (the Video Law), domestically-produced or domestically-inserted broadcast video content (including video content created outside of Myanmar) being broadcasted must first be certified with a Video Censor Certificate issued by the Video Censor Board (VCB), which is formed under the Ministry of Information with the mandate to review the suitability of video content for exhibition in Myanmar in accordance with its internal policies and directives, which are not publicly available. The members of the VCB consists of both government and non-government personnel. The extent of the real application of this requirement remains vague. 	

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2. Copyright protection?	<ul style="list-style-type: none"> As part of a set of new laws which represent a new intellectual property protection framework, the new Copyright Law 2019 (the Copyright Law) was passed and enacted by Myanmar's Parliament. The Copyright Law has come into effect on 31 October 2023 in accordance with the State Administration Council (SAC) Notification No. 218/2023. To implement the Copyright Law, the Ministry of Commerce (MOC) issued the "Copyright Rules" under Notification No. 70/2023, which has come into effect on 31 October 2023. The Copyright Rules set out the procedures for the registration of copyright and related rights. The Copyright Law and the Copyright Rules (collectively, the New Copyright Regime) have replaced the previous Burma Copyright Act 1914. Under the Copyright Law, copyright infringements such as the unauthorised reproduction, transmission, or distribution of copyrighted works, possession of infringing goods for commercial purposes, and importation of infringing items into Myanmar, among others, are regarded as criminal offences. The Copyright Law also provides civil remedies to the owners of a copyright that has been infringed. Any disputes related to the registered copyrights or related rights can be settled through court proceedings or by arbitration under the Copyright Law. The Supreme Court is also given authority to establish intellectual property courts (through series of Notifications 961-965/2023). Copyrights or related rights owners may file both miscellaneous civil cases for provisional measures and criminal or civil cases with intellectual property courts. The Copyright Law bolsters the current regime (copyright infringement is still a criminal offence under the Copyright Law) by granting copyright protections to foreign copyrights which are protected under international treaties relating to copyright protection to which Myanmar is a member state. Such international treaties include the Agreement on Trade Related Aspects of Intellectual property Rights (TRIPS) and the ASEAN Framework Agreement on Intellectual Property Cooperation. 	<ul style="list-style-type: none"> In addition to the above, we note that the Central Committee for IP Rights (CCIPR), was formed on 6 March 2020. The CCIPR is responsible for development of policies in relation to the protection of intellectual property rights. Its formation represents a further step towards the implementation of Myanmar's intellectual property protection framework, which includes the Copyright Law 2019 as one of a suite of four new intellectual property protection laws.

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	<ul style="list-style-type: none"> The Copyright Law provides for exemption that short extracts can be used from material as long as the use of such short extracts does not result in damage to the interests of the owner. The New Copyright Regime is now deemed to be in full function. The official forms for copyright and related rights matters are available in Notification No.73/2023 issued by the MOC. In February 2024, Myanmar's Intellectual Property Department (IPD) began accepting applications for copyright and related rights registration under the Copyright Law 2019. In addition, prospective copyright applicants can now rely on information of specific service fees for the registration of copyright and other related rights provided in the SAC's Notification issued on 13 February 2024. Additionally, under Section 33 of the Video Law, it is an offence to exhibit video content generated by a video business licensee in Myanmar and that has been certified with a Video Censorship Certificate, without the permission of the relevant licensee that had created such video content. Infringers are liable to be subject to imprisonment and/or a fine. 	
3. Convergence and new technologies	<ul style="list-style-type: none"> To date, there are no specific regulations on convergence. We note that 5 domestic FTA digital TV program service licences were issued to 5 digital channel providers to broadcast programs under the purview of the state-owned broadcaster, Myanmar Radio and TV (MRTV) in February 2018, by way of a cooperation agreement between the MOI and each of these 5 digital channel providers. However, two of these content providers have been banned during the ongoing coup in Myanmar. 	<ul style="list-style-type: none"> None.
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> The Broadcasting Law does not prohibit the distribution of foreign channels and advertisements by licensed pay TV operators. 	<ul style="list-style-type: none"> None.
5. Licence fees and taxation	<ul style="list-style-type: none"> Organisations who intend to operate a commercial broadcasting service, including pay TV operators, are required to obtain a licence from the Council before commencing operations. Licensees must commence broadcasting operations within one year of obtaining a licence. We understand that the applicable licence fees are to be determined by the Council, depending on the scope of broadcasting services (i.e. commercial, distribution, community or government broadcasting services) to be 	<ul style="list-style-type: none"> Further details in relation to the specific licence fees applicable to Commercial Distribution Services such as pay TV operators may be stipulated in accompanying regulations to the Broadcasting Law when it is enacted.

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	<p>provided. The guiding principle behind such discretion, as set out in Section 14 of the Broadcasting Law, is that such fees must be reasonable to cover the costs and expenses for regulation and supervision of broadcasting operations and must allow for the economic viability of broadcast institutions.</p> <ul style="list-style-type: none"> Section 45(d) of the Broadcasting Law further requires the Authority's consent for the Council to define the specific licence fees for Commercial Broadcasting Services. To date, the Council has not made any notifications or announcements setting out any licence fees. 	
<p>6. Rate regulation <i>Including wholesale and retail rate regulation and whether there are any price controls on eg. basic tier</i></p>	<ul style="list-style-type: none"> There are no specific regulations or policies which regulate the retail or wholesale rates or impose any such price controls on the tiering of a pay TV service or the provision of broadcast services. 	<ul style="list-style-type: none"> None.
<p>7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i></p>	<ul style="list-style-type: none"> There are no specific regulations relating to programme packaging under the Broadcasting Law. For completeness, we note that the practice of bundling may give rise to certain competition law issues if it is perceived to constitute an act of restraint on competition or unfair competition conduct under Section 13 of Myanmar's Competition Law. 	<ul style="list-style-type: none"> None.
<p>8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i></p>	<ul style="list-style-type: none"> Commercial broadcasting services such as pay TV operators are required to limit the broadcasting of commercial advertisements to a maximum duration of 12 minutes for every one hour of daily broadcasting and allocate at least five percent of their airtime to broadcast public service advertisements, to be prescribed by the Council for free as part of their corporate social responsibility requirements under Section 72 of the Broadcasting Law. There is no difference between the treatment of foreign and domestic advertisements. All advertisements are subject to the same regulations and standards. Advertising content may be further subject to the MOI's advertising policies and guidelines, which are set out in more detail in MOI Notification No. 1/2014, which published MOI's "Media Advertising Policy". The MCC sets out that advertisements broadcast on televisions should be distinguished from other media content by visual cues and confined to 	<ul style="list-style-type: none"> None.

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	commercial breaks. Any commercial products and services referenced in broadcast media should not be given greater prominence than otherwise justified by editorial considerations.	
9. (a) Content regulation <i>Including local content quotas, content control and insertion of classification and other content labels into international feeds</i>	<p><u>Requirement of a Video Censorship Certificate</u></p> <ul style="list-style-type: none"> Content which is either (i) created locally in Myanmar; or (ii) created outside of Myanmar but curated, exhibited and distributed by a service provider (i.e. a Pay TV Operator) based locally in Myanmar must first be reviewed by the VCB and issued with a Video Censorship Certificate, in accordance with Section 32 of the Video Law. Exhibiting video content which has not been issued with the requisite Video Censorship Certificate publicly in contravention of Section 32 could attract criminal liability and be punishable with imprisonment and/or a fine. We understand from an informal consultation with the relevant regulator that it actively monitors and contemplates enforcement actions against broadcasters in Myanmar who have engaged in the broadcasting of video content which have not been duly reviewed and issued with the requisite Video Censorship Certificate. In practice, the requirement for a Video Censorship Certificate is not enforced against providers of foreign international channels (e.g. HBO, Fox moves, etc). given that the entities responsible for the curation of the content shown on such channels are not based in Myanmar. In these situations, the local service provider (i.e. the broadcast licensee receiving and broadcasting the content within Myanmar) would instead be responsible for ensuring that the content being broadcasted is compliant with the codes of conduct published by the Council. <p><u>Content Quotas</u></p> <ul style="list-style-type: none"> Under Section 67 of the Broadcasting Law, pay TV operators with national coverage are required to allot at least 30% of their programmes to locally-produced programmes and ensure that at least 20% of their programmes are produced by local independent producers and ensure that at least half of such programmes are broadcast during “prime time” slots. Such 	<ul style="list-style-type: none"> None

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	<p>requirements are enforced by the Council either by way of specific licence conditions or by way of regulations or prescribing policy and guidelines. At least 30% of a channel's daily programming and 20% of a licensed Commercial Broadcasting Service's total programmes must consist of locally created content.</p> <p><u>Other requirements</u></p> <ul style="list-style-type: none"> • Generally, the content of broadcast programmes must comply with a broadcast code of conduct (the Code of Conduct), which sets out broad requirements relating to the content being broadcast, based on moral and ethical values and other standards widely accepted by media industries. • At this juncture, the Code of Ethics for TV and Broadcasting (which was introduced in 2016) sets out programmes which are not suitable for children and restricts the broadcasting of such programmes to specific times (e.g. late evening). • The commercial practice is for broadcasting services to censor broadcast programmes based on their own internal guidelines. We also note that the MCC sets out that content unsuitable for children should not be broadcast at times when large amounts of the audience are expected to be children, and recommends for such programmes, trailers or promotions are broadcast after 10:00PM. • The SAC amended the Penal Code to penalise any anti-military content or any criticism against the military and such actions are regarded as high treason or sedition, and any statement which undermines the morale of the military, or the government employees can be sentenced with imprisonment. • Since the state of emergency declaration was announced on 1 February 2021, the broadcasting channels and digital content providers have been practising internal self-censorship to avoid any penalty or potential revocation of their licences. 	

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9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> There are no regulations on the content of programmes in relation to the dubbing, subtitling or captioning of such programmes, although we note that the Code of Ethics for TV and Broadcasting requires any Myanmar language subtitles for news, advertisements and other programmes to be grammatically correct and to not contain any spelling errors. 	<ul style="list-style-type: none"> None.
10. Programme supply restrictions <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i>	<ul style="list-style-type: none"> Apart from the requirements for a minimum proportion of the broadcast programmes to consist of locally produced programmes as alluded to above, there are no regulations which mandate or restrict the supply or flow of programmes. 	<ul style="list-style-type: none"> None.
11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> Under the Broadcasting Law, foreign companies and individuals are not permitted to hold more than 30% in a commercial broadcasting service licensee. Such investments have been designated as restricted investments by the Myanmar Investment Commission under Notification No. 15/2017 and Section 42 of the Myanmar Investment Law and are further subject to approval from the MOI. For context, under the Myanmar Companies Law 2016, a foreign company is defined as a company with more than 35% of its shares being held by a foreign person or overseas corporation. 	<ul style="list-style-type: none"> None.
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> There are no specific regulations imposing “must carry” obligations on pay TV operators, although in practice the principal channel of the state broadcaster MRTV is carried on all pay TV platforms. 	<ul style="list-style-type: none"> None.
13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i>	<ul style="list-style-type: none"> The Consumer Protection Law (CPL) provides for general consumer protection rights and sets out the responsibilities of both consumers and service providers. The false advertising of goods and services is prohibited under the CPL. There are no specific consumer protection regulations targeted at the provision of pay TV services. Although the new Consumer Protection Rules came into effect in 2022, these provisions generally protect the consumers for goods and services purchased and there are no updates which are related to pay TV. 	<ul style="list-style-type: none"> None.
14. Entering a new market: FAST TV	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A

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15. Data handling	<ul style="list-style-type: none"> • In 2021, the Electronic Transaction Law (ETL) was amended to require that online content providers (including Pay TV) which provide services in Myanmar over the internet to appoint data protection officers. • Section 27(a) of ETL imposes duties on the data protection officer such as to carry out systematic maintenance, protection and management of personal information based on its type and level of security, systematically destroy the personal information collected after a specified time, and not to use personal information that is inconsistent with the purpose of collection, etc. 	
Other country-specific information not already covered	<ul style="list-style-type: none"> • Cross ownership between print media services and broadcasting media services is a restricted investment under Notification No. 15/2017 issued by the Myanmar Investment Commission under the Myanmar Investment Law. The prior approval of MOI is required before such a restricted investment can be undertaken. • Furthermore, under Section 51 of the Broadcasting Law, a company which has control (e.g. more than 50% direct or indirect ownership or the legal right and entitlement to control the management and day to day operations) in a private print company is prohibited from holding more than 30% of the shares in another private broadcasting company, and vice versa. 	<ul style="list-style-type: none"> • None.