

# Legal Update

February 2024



## AN IN-DEPTH LOOK INTO THE NEW LAW ON TELECOMMUNICATIONS OF VIETNAM

On 24 November 2023, Vietnam's National Assembly promulgated Law No. 24/2023/QH15 on Telecommunications (the "**New Telecoms Law**"), replacing the Law No. 41/2009/QH12 on Telecommunications dated 23 November 2009 (the "**2009 Law**"), aiming to introduce a new and updated version that is better aligned with the present digital economy. The New Telecoms Law will take effect from 1 July 2024, save for certain provisions on (i) data center service, cloud computing services, and Telecommunication application or "Over-The-Top" ("**OTT**") services, and (ii) the payment of fees for registering or maintaining the use of network numbers that will take effect from 1 January 2025. The implementation and enforcement of the New Telecoms Law are under the responsibility of the Ministry of Information and Communication.

We highlight here a number of key points and implications in an easy-to-read point form and the detailed write up follows in the sections below.

### 1. Scope:

- Expanded to include "non-traditional" services like OTT, data centers, and cloud computing.
- Regulates basic, value-added, internet-based, and resale of telecom services.

### 2. Licenses:

- Two types of licenses: **with** network infrastructure (15 years) and **without** network infrastructure (10 years).
- Existing licenses under 2009 Law shall remain valid until expiry.
- Individual and class licenses may be issued based on specific scenarios and general conditions.
- **Do not** apply to the new services including data center, cloud computing and OTT communication services.

### 3. Data Center & Cloud Services:

- Defined and regulated for the first time in the Vietnam regulatory framework.
- Unrestricted investment, registration, and notification, not a licensing model.
- Obligations include ensuring service quality, user data protection, and network connectivity.

#### **4. Over-the-Top (OTT) Services:**

- Covered under "telecommunications application services."
- Registration not licensing required, but compliance with quality, security, and user protection regulations required.
- OTT providers to register template contracts and general terms and conditions with the regulatory authority.

#### **5. Cross-border Services:**

- Foreign providers must comply with national security and data protection laws of Vietnam.
- Vietnamese providers abroad must respect host country's laws and treaties.
- Further guidance expected on cross-border provision of services.

#### **6. Telecoms Wholesale:**

- New regulations to create fairer market with transparent pricing.
- Companies with dominant market power must offer wholesale services and adhere to cost accounting.
- Aims to increase competition and benefit both businesses and consumers.

#### **7. Information Confidentiality & Data Protection:**

- Stricter regulations on protecting user privacy and sensitive information.
- Disclosure only allowed with user consent, specific legal requirements, or state agency requests.
- Clear responsibilities for entities and strong conditions for disclosing private information.

#### **8. Connecting & Sharing Infrastructure:**

- Encourages collaboration and shared use of telecommunications infrastructure across various domains.
- Investors in certain projects obligated to develop telecommunications technical infrastructure.
- Rights for telecommunications enterprises to connect their networks with others, ensuring fairness and resource efficiency.

#### **9. Auction/Transfer of Telecoms Resources:**

- Competitive allocation of rights to use telecommunications numbers and Vietnamese domain names ".vn."
- Online auctions and first-come, first-served approach utilized for different resources.

#### **10. Conclusion and Implications:**

- Increased competition and innovation in the Vietnamese telecom market.
- More options and potentially lower prices for consumers.
- Greater clarity and certainty for businesses operating in the telecom sector.
- Increased emphasis on data protection and user privacy.

### **1. Details of Expanded Scope**

The New Telecoms Law has an expanded scope when compared to the 2009 Law, and now covers new "non-traditional" telecoms services. The Law now regulates the following telecommunications and related services, namely:

- (a) **Basic telecommunications services**, defined as services for sending, transmitting, and receiving information between two or a group of telecommunications service users, between end devices over a telecommunications network.
- (b) **Value-added telecommunications services**, defined as basic telecommunications services that offer additional features to their users.
- (c) **Basic telecommunications services on the Internet (OTT services)**, defined as a service of sending, transmitting, and receiving information between two or more telecommunications services users on the Internet and between terminals via telecommunications networks;<sup>1</sup>
- (d) **Data center service**, defined as a service that provides information processing, storage, and retrieval features to users via telecommunications networks by leasing part or the whole of the data center.<sup>2</sup>
- (e) **Cloud computing services**, defined as a service that provides information processing, storage, and retrieval features for users via telecommunications networks through cloud computing.<sup>3</sup>
- (f) **Telecommunication application services**, defined as a service that uses telecommunication network to provide application services in the fields of information technology, radio, television, commerce, finance, banking, culture, information, healthcare, education and other domains.<sup>4</sup>
- (g) **Resale of telecommunications services**, defined as the provision of telecommunication services (as described above) by a telecommunications enterprise or service agent to the users on the basis of leasing the transmission lines or purchasing telecommunications traffic or services through contracts with other telecommunications enterprises.<sup>5</sup>

The Government's decree guiding the implementation of the New Telecoms Law and/or a classification circular by the Ministry of Information and Communications is anticipated to provide more information on the specific categories of telecommunications services. As of date of writing, the a draft guiding Decree has been published on 31 January 2024. We anticipate that a follow-up analysis to this article covering a more in-depth review of the draft guiding Decree will be provided in the coming days.

## 2. Licenses

The New Telecoms Law applies to Vietnamese and foreign organizations and individuals directly involved or related to telecommunications activities in Vietnam.<sup>6</sup> These activities are broadly defined and notably include investment in, and provision of telecommunications services, trading in telecommunication goods (supplies and equipment like hardware and software), and construction of telecommunications works or infrastructure. Article 2 of the New Telecoms Law.

### Telecoms License

The New Telecoms Law stipulates two types of licenses for telecommunications services:<sup>7</sup>

- (a) **License for the provision of telecommunications services with network infrastructure**, which has a term of up to **15 years**; or
- (b) **License for the provision of telecommunications services without network infrastructure**, which has a term of up to **10 years**.

<sup>1</sup> Article 3.8 of the New Telecoms Law.

<sup>2</sup> Article 3.9 of the New Telecoms Law.

<sup>3</sup> Article 3.11 of the New Telecoms Law.

<sup>4</sup> Article 3.11 of the New Telecoms Law.

<sup>5</sup> Article 3.33 of the New Telecoms Law.

<sup>6</sup> Article 2 of the New Telecoms Law.

<sup>7</sup> Article 33.1 of the New Telecoms Law.

This is a departure from the 2009 Law, which provided for **a license for the establishment of telecommunications networks** and **a license for the provision of telecommunications services**.

For licenses granted under the 2009 Law, these licenses shall continue to apply and remain valid until their expiry according to their term. Any application for a license prior to the effective date of the New Telecoms Law but for which the requested license is not granted before its entry into force (e.g., 1 July 2024) will be considered in accordance with the provisions of the 2009 Law.<sup>8</sup>

Telecom service licenses are granted in two forms as stipulated in Article 35 of the New Telecoms Law, namely:

- (i) Individual licenses are tailored to specific scenarios like frequency auctions or government-designated areas, with customized conditions and obligations for each company; or
- (ii) Class licenses which cover standard infrastructure and non-infrastructure services, with general conditions for all companies except those requiring simplified registration procedures.

Essentially, individual licenses are bespoke, while class licenses apply ordinarily to all licensees within the same category.

It is noted pertinently that the telecoms licenses **do not** apply to the new services including data center, cloud computing and OTT communication services.

### 3. Data Center Services and Cloud Computing Services

The New Telecoms Law has for the first time dealt with enterprises providing data center services and cloud computing services. The Law defines “*data center*” (as a telecommunications facility that includes a building, station, cable system, computer system, electrical system, and auxiliary equipment installed therein to process, store, and manage data for one or more organizations or individuals), “*data center services*” (as telecoms services that provide information processing, storage, and retrieval features for users via telecoms networks by leasing part or all of a data center), “*cloud computing*” (as a model that allows flexible use, adjustment, and management of shared computing resources including network, server, storage device, application according to needs), and “*cloud computing services*” (as services that provide information processing, storage, and retrieval features for users over telecoms networks through a cloud computing model) set out in Articles 3.23, 3.9, 3.10, and 3.11 respectively.

The rights and obligations of data center and cloud computing service providers (“**Data Center and Cloud Computing Providers**”) include unrestricted investment, registration, and **notification** of the provision of telecommunications services, as opposed to a licensing model for traditional telecommunication services. It appears that regulation of such providers NOT being akin to traditional telecommunication service providers is a welcomed move having taken into account the opinions of various stakeholders during the consultation period prior to the promulgation of this New Telecoms Law.

These Data Center and Cloud Computing Providers must announce their service quality and conformity to applicable technical regulations and standards, and ensure that telecommunications enterprises can connect and provide services to users of data center services. They are also required to prevent unauthorized access, exploitation, or use of user information without consent, and take necessary measures to prevent access to information as required by competent state authorities. However, they are not responsible for the content of user information unless required (to be responsible) by competent state authorities. These companies are required to register, store, and manage information about service users in accordance with government regulations, and to report on the quality of the services they provide. Last but not least, they must ensure their compliance with various other laws, including those on network information security and personal data protection.

<sup>8</sup> Article 73

The government is expected to issue detailed regulations on various aspects relating to data centers and cloud services providers, including the potential regulations surrounding the provision of these services on a cross-border basis (as with many providers, the data centers could be situated abroad).

#### 4. Over-The-Top (OTT) Telecoms Services

The New Telecoms Law introduces “telecommunications application services” defined as a *service that uses a telecommunications network to provide application services in the fields of information technology, radio, television, commerce, finance, banking, culture, information, healthcare, education and other domains*<sup>9</sup> which covers OTT services. These services involve sending, receiving, and processing information between users over the internet.

In addition to the general obligations of telecommunications enterprises, enterprises providing basic telecommunications services on the Internet are also required to:

- (a) Register or notify the provision of telecommunications services. This means they are **not** required to obtain a service license.
- (b) Comply with regulations on the quality of services, information security, and user protection.

OTT service providers are to register their template contracts and general terms and conditions in accordance with the Law on Consumer Protection.<sup>10</sup>

#### 5. Cross-border provision of Telecom services

Further guidance will be issued on cross-border provision of telecom services, but the New Telecoms Law clarifies that:

- (a) foreign organizations providing telecommunication services in the territory of Vietnam must comply with the requirements of safety, security, national defense, and public order and must abide by any obligations imposed on them pursuant to the Law on Cybersecurity and the Law on Network Information Security.
- (b) Vietnamese telecom enterprises partnering with foreign providers must have a technical plan for information security and be ready to prevent emergencies or stop services as required by Vietnamese authorities.<sup>11</sup>

In the last publicly available draft prior to adoption, there was a requirement that cross-border services would only be possible through a commercial agreement with a Vietnamese telecom enterprise. It is expected that this requirement be included in the guiding decree.

As of date of writing, the draft guiding Decree to the New Telecoms Law has just been published on 31 January 2024 for consultation with stakeholders. The Draft Decree outlines regulations for cross-border provision of Telecom services in Vietnam. Traditional telecoms providers must have agreements with licensed Vietnamese providers, technical security plans, and emergency shutdown procedures. Additionally, information security, data encryption, and confidentiality are mandatory. Foreign OTT providers offering cross-border services have more relaxed rules, including notifying authorities, complying with telecom laws, ensuring network safety, protecting user data, and following shutdown protocols during emergencies. They must maintain quality, fair pricing, and report activity while adhering to data privacy regulations. Foreign data centers and cloud providers must also notify authorities, secure user data, and comply with shutdown procedures. Overall, the legislative intention is that data security and user privacy are paramount in such cross-border provision of services. As with the earlier topics covered in this article, we anticipate that a follow-up and more in-depth review of the draft guiding Decree shall be published as a supplement to this article in the coming days.

<sup>9</sup> Article 1.12

<sup>10</sup> 20.4

<sup>11</sup> Article 21.2 and 21.3



As for Vietnamese telecommunication enterprises providing services abroad, such enterprises must continue to comply with Vietnamese laws and additionally, international treaties that Vietnam has ratified, and the laws of the country where they operate as a service provider.<sup>12</sup>

## 6. Telecoms Wholesale

The New Telecoms Law introduces regulations for wholesale activities in Vietnam. This aims to create a fairer market by ensuring transparency and competitive pricing between telecoms companies. Companies with significant market position will be required to offer wholesale services and adhere to cost-accounting practices. This should ultimately lead to increased competition and benefit both businesses and consumers. Think of it as providing a level playing field for building telecom services. Fair access to wholesale services at reasonable prices enables innovation and affordability, ultimately benefiting end-consumers and preventing anti-competitive conduct on a wholesale level.

In particular, the 2009 Law was incomplete in relation to wholesale management, focusing solely on interconnection and common use of essential facilities without addressing the buying and selling or resale of telecoms traffic / services. The New Telecoms Law now contains a comprehensive set of regulations for both wholesale and retail telecoms markets. This is aimed at promoting healthy competition, facilitating business entry into the telecoms market, and encouraging the development of new services and applications.

The new legislation defines “telecom wholesale” as *telecommunications enterprise leasing a telecommunications network to another telecommunications enterprise or purchasing its telecommunications traffic and services to serve the provision of telecommunications services*.<sup>13</sup>

Prior to the New Telecoms Law, only a handful of players shared the market. With these new provisions, the government creating an environment where new players may potentially enter the market and is aimed at rendering a competitive market environment by imposing certain obligations on telecommunications enterprises with dominant market positions (which are to be determined pursuant to criteria to be defined by the government) such as:

- (a) engage in wholesale activities when requested by another telecommunication enterprise;
- (b) perform cost-accounting for telecommunication services they provide;
- (c) refrain from providing telecommunication services below the actual cost, except where permitted by law;
- (d) use model agreements for wholesale activities as mandated by the MIC.<sup>14</sup>

Wholesale activities are regulated to ensure that services to other service providers (by those with dominant market position) are provided at fair and reasonable tariff charges (without a “margin squeeze” on newer entrants), ensuring non-discriminatory practices, and maintain transparency in tariff charges, telecom standards, technical regulations, and network service quality.<sup>15</sup> Interestingly, the New Telecom Law also imposes to telecommunication services providers with network infrastructure the obligation to lease the passive infrastructure when economically and technically feasible and as aligned with the infrastructure planning.<sup>16</sup>

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<sup>12</sup> Article 20.5

<sup>13</sup> Article 16.1

<sup>14</sup> Article 17

<sup>15</sup> Article 16.2

<sup>16</sup> Article 13.4 b

The Vietnamese telecoms market is currently dominated by **five major players**: VinaPhone, Viettel, MobiFone, Vietnammobile, and Gtel. These established giants control the majority of the network infrastructure, shaping the landscape for consumers and businesses alike. However, the legal framework for infrastructure leasing was previously underdeveloped, posing challenges for alternative telecom service providers like mobile virtual network operators (MVNOs). MVNOs operate without their own infrastructure, relying on renting capacity from existing networks to offer competitive mobile services. The introduction of new regulations governing telecoms infrastructure rental, or wholesale services, is a landmark move and expected to provide a more comprehensive legal framework for infrastructure leasing, paving the way for increased competition and innovation in Vietnam's telecoms market.

## 7. Ensuring Information Confidentiality and Data Protection

Vietnam has revamped its personal data protection legal framework in recent years with an aim to empower individuals with control over their data and its use by companies. The New Telecoms Law is no exception to this new endeavor with the reinforcement of the obligations relative to the protection of **sensitive** information in telecommunications.

With competent state agencies responsible for information control on the network,<sup>17</sup> telecommunications service providers are strictly prohibited from disclosing users' private information unless:

- (a) in cases involving written agreements for rate calculation and service invoicing, acts of evading payment obligations, or
- (b) when requested by competent state agencies in line with relevant laws; or
- (c) explicit user consent is obtained.<sup>18</sup>

Telecommunication service providers must also obtain consent from users in case of accessing users' devices<sup>19</sup> and shall not access, exploit or use the data of users that they process without the users' consent.<sup>20</sup> This is similarly applicable for the publication by the telecommunication enterprise of a user's information in any public telephone book or directory which requires consent from the user.<sup>21</sup>

There are clear responsibilities for entities and stringent conditions for disclosing private information. Organizations and individuals involved in telecommunications activities must safeguard state secrets.<sup>22</sup> When transmitting or storing information categorized as state secrets on telecommunications networks, encryption is required.

On the other hand, the obligations of telecommunication service providers require them to only provide services to user that provide complete information matching their ID papers upon the conclusion of the contract;<sup>23</sup> to authenticate and maintain accurate information on users or otherwise handle the SIM cards;<sup>24</sup> to prevent illegal messaging or calls;<sup>25</sup> to stop providing services to users who violate the law,<sup>26</sup> etc.

Hence the personal data protection obligations are not to the extent of permitting the anonymous use of telecommunication infrastructure. This can be understood as a means by which the authorities are able to monitor the misuse of the telecommunication services by users with an aim to protect national security.

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<sup>17</sup> 6.3

<sup>18</sup> 6.4

<sup>19</sup> Article 28.2 dd

<sup>20</sup> 29.2 dd.

<sup>21</sup> 26.2

<sup>22</sup> 6.1

<sup>23</sup> 13.2 l

<sup>24</sup> 13.2 k

<sup>25</sup> 13.2 l

<sup>26</sup> 13.2 m

## 8. Connecting and Sharing Telecommunications Infrastructure

The new legislation also authorizes the establishment and installation of telecommunications projects on public land, fostering the collaborative utilization of infrastructure shared among telecommunications and other technical projects. In this context, investors in various domains such as apartment buildings, public works, functional areas, and industrial clusters are mandated to develop telecommunications technical infrastructure.

Simultaneously, these investors bear the responsibility of designing, constructing, managing, and utilizing telecommunications technical infrastructure to meet the requirements of at least two telecommunications enterprises. The New Telecoms Law asserts rights of telecommunications enterprises to connect their networks to those of others, emphasizing fairness, effective resource utilization, technical requirements adherence, and protection of the legitimate rights and interests of relevant parties.

The legislation also touches upon connectivity to public and private telecommunications networks, outlining responsibilities, non-discrimination principles, and connection dispute resolution mechanisms.

## 9. Auction/Transfer of Telecoms Resources

The auction process involves the competitive allocation of rights to use telecommunications number stores and Vietnamese national domain names ".vn." For telecommunications number stores, including terrestrial mobile network codes and service subscriber numbers, short message application service numbers, and information answering service numbers, an online market lists the available codes and numbers for organizations and individuals to choose through auction.

The starting prices for these auctions are determined based on factors such as the gross domestic product (GDP) per capita or the one-year usage fee of the specific code or number, and the auction will likely be conducted online on the Ministry of Information and Communications' portal. If the listed telecommunications number stores go unclaimed during the auction period, they may be directly allocated to organizations or individuals upon request, with associated fees payable.

Similarly, the auction of Vietnamese national domain names ".vn" involves determining starting prices equivalent to the one-year usage fee, and winning organizations and individuals must complete registration procedures and pay the relevant fees to utilize the auctioned domain name. Also, the new law maintains the "first come, first served" approach for certain resources.

## 10. Conclusion and Implications

The implications of this law are multifaceted and extend beyond the telecommunications sector (such as to OTT and non-traditional services). It reflects a broader policy shift towards fostering a more secure, competitive, and user-centric digital environment in Vietnam. The overall framework established by the New Telecoms Law holds immense potential for transforming Vietnam's digital landscape and driving future growth. As noted, the guiding Draft Decree has just been published on 31 January 2024, we anticipate to provide our views in a more in-depth analysis in a Part 2 supplement to this article.



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