

New points of Telecoms Law 2023

On 24 November 2023, the National Assembly of Vietnam adopted Law on Telecommunications No.24/2023/QH15 (“Telecoms Law 2023” or “new Law”). The Telecoms Law 2023 will take effect on 1 July 2024, except for certain regulations on management of data center services (IDC), cloud computing services, and basic telecommunications services on the Internet (Over-The-Top (OTT) services), which will become effective from 1 January 2025, and shall supersede the current Law on Telecommunications No.41/2009/QH12 passed by the National Assembly on 23 November 2009, as amended in 2017 and 2018 (“Telecoms Law 2009” or “current Law”).

The Telecoms Law 2023 has a number of new regulations compared to the Telecoms Law 2009, specifically as follows:

1. Digital infrastructure

“*Digital infrastructure*” is mentioned for the first time in a Law. The new Law additionally provide provisions on a number of key components of “digital infrastructure”, including: IDCs and cloud computing.

2. Cross-border provision of telecommunications services

The Telecoms Law 2023:

(a) redefines telecommunications services, which still include basic telecommunications services and value-added telecommunications services but with their new definitions, namely:

(i) “*Basic telecommunications services*” are services of sending, transmitting, receiving information between two people or a group of users of telecommunications services, between terminal devices over telecommunications networks;

(ii) “Value-added telecommunications services” are services that provide additional information processing, storing and retrieving features for users through sending, transmitting and receiving information on telecommunications networks; and

It is worthy of note that the said new definitions replace a general definition of telecommunications services under the Telecoms Law 2009, a list of basic telecommunications services and a list of value-added telecommunications services under Decree No. 25/2011/ND-CP dated 6 April 2011, as amended in 2017, guiding the implementation of some articles of the Telecoms Law 2009.

(b) still confirms that the cross-border provision of telecommunications services to users in the territory of Vietnam must comply with Vietnamese laws and international treaties to which Vietnam is a member, in particular:

(i) Service must be offered through commercial arrangements with an entity established in Vietnam and licensed to provide international telecommunication services, except for satellite-based services offered to off-shore/ on sea based business customers, government institutions, facilities-based service suppliers, radio and television broadcasters, official international organization’ representative offices, diplomatic representatives and consulates, high tech and software development parks, and multinational companies, which are licensed to use satellite-earth stations; and

(ii) Regarding non facilities-based services, joint venture will be allowed without limitation on partner selection for provision of certain basic telecommunication services consisted of:

- Voice telephone services;
- Packet-switched data transmission services;
- Circuit-switched data transmission services;
- Telex services;

- Telegraph services;
- Facsimile services;
- Private leased circuit services;
- Videoconference services;
- Video Transmission services, excluding broadcasting;
- Radio based services, including: (Terrestrial or satellite) Mobile telephone, (Terrestrial or satellite) Mobile data, Paging, PCS, Trunking;
- Internet Exchange Service (IXP);
- Virtual Private Network (VPN) service;

and Internet Access Services (IAS) value-added telecommunication service.

As an additional requirement by the new Law, Vietnam-based telecommunications entities participating in commercial agreements with foreign organizations providing telecommunications services under the mode of cross-border supply, to users in the territory of Vietnam, must now have a technical plan to ensure information security and carry out emergency prevention and stop providing telecommunications services at the request of the State competent agencies.

3. Data center services, cloud computing services, and OTT services

A noteworthy aspect of the Telecoms Law 2023 is the clarification of data center services, cloud computing services, and OTT services within the purview of telecommunication services. Previously, these services were not clearly defined, but implicitly categorized as somethings like telecommunication services due to the broad interpretation of the term under Vietnamese laws. Consequently, they are subject to the foreign ownership limitations generally stated in the Vietnam's WTO Commitments, which has in fact created regulatory complexities in many cases. Now, these services are clearly defined as telecommunications services, in which:

(a) *“Basic telecommunications services on the Internet”* are telecommunications services that provide the main features of sending, transmitting, and receiving information between two people or a group of people using telecommunications services on the Internet;

(b) *“Data center service”* is a telecommunications service that provides information processing, storing and retrieving features for users via telecommunications networks by leasing a part or whole of the data center; and

(c) *“Cloud computing service”* is a telecommunications service that provides information processing, storing and retrieving features.

With the introduction of new Law, the State agencies now adopt a light-touch, open and flexible approach to the management of these services to better protect users’ rights (through requesting service providers to declare quality of the services, protect data and personal information) and ensuring safety and security of the services to be provided. Specifically, the Telecoms Law 2023 now eliminates the restriction to foreign ownership that were previously applicable to foreign/ local joint-ventures providing these services. By taking a more appropriate approach to the management of these services, the legislation makers aim to facilitate the growth and development of these crucial services within the country and simultaneously streamline regulatory requirements for service providers.

4. Exemptions from telecommunications license, registration & notification of telecommunications service provision

The Telecoms Law 2023 further develops four (4) cases in which the service providers are exempted from telecommunications license (or registration & notification procedures), including:

(a) Trading telecommunication goods;

(b) Providing telecommunications services in the form of telecommunications service agents;

(c) Rent transmission lines to provide telecommunications application services; and

(d) A private telecommunications network whose network members belong to the same organization and do not themselves establish telecommunications transmission lines.

With the exemptions under the new Law, setting up an intranet within organizations, even those operating on a multinational scale, no longer requires a telecommunication license (or any registration and notification) if the intranet members do not establish their own telecommunications transmission lines. This is a significant development under the new Law, for the benefits of entities in such exempted cases, especially in an era where technological infrastructure and connectivity significantly affect business operations.

5. Telecommunications infrastructure development

The Telecoms Law 2023:

(a) requires the Minister of the Ministry of Information and Communications (similar to the Telecoms Law 2009) to promulgate the list of the State-managed telecommunications service markets apart from the list of the State-managed telecommunications enterprises and groups of enterprises with a dominant market position telecommunications service markets and the list of telecommunications enterprises holding essential means already provided for by the current Law;

(b) specifies additional telecommunications building works that are constructed and installed on public property;

(c) provides for enhanced common use of inter-industrial infrastructure such as: investors of technical infrastructure construction projects (transportation, construction, etc.)

must notify telecommunications enterprises to register for common use;

(d) regulates the responsibilities of investors of projects on construction of apartment buildings, public works, functional areas, etc. in designing, constructing, and arranging area for construction and installation of telecommunications infrastructure; and

(e) add responsibilities of People's Committees at all levels as well as relevant Ministries and branches to handle acts that obstruct the lawful construction of telecommunications infrastructure.

6. Auction of telecommunications numbers and Internet resources

The Telecoms Law 2023:

(a) specifically regulates: (i) types of grant of telecommunications codes and numbers, including auction and direct allocation; (ii) types of grant or allocation of Vietnam's Internet resources, including auction, direct grant and direct allocation; and (iii) order of and procedures for auction;

(b) let the selection of auctioned telecommunications codes and numbers be decided by the market; and

(c) specifies the starting price for each type of telecommunications code or number, or Internet domain name to be auctioned.

7. Treatment of "telecommunications waste"

The new Law adds:

(a) the obligation of telecommunications enterprises to authenticate, store and manage subscriber information; deal with SIMs with incomplete or inaccurate information; prevent

spam messages, spam calls and phone scams;

(b) the obligation of telecommunications subscribers not to use their personal information to enter into contracts for and on behalf of others unless permitted by law and to take responsibility for the registered numbers; and

(c) prohibited act of using equipment and software to send, transmit, and receive information via telecommunications networks to commit acts that violate the laws.

8. Market entry and licensing reforms

The new Law restructures telecommunications licenses to simplify procedures and encourages market entry for some non facilities-based telecommunications services, simultaneously imposes stricter licensing conditions with respect to those providing facilities-based services and using frequency resources./.

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