

TELECOMMUNICATIONS IN VIETNAM

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GLOSSARY

ADSL	Asymmetric Digital Subscriber Line
ASN	Autonomous System Number
AVG	Audio Visual Global Joint Stock Company
BTA	Vietnam-US Bilateral Trade Agreement
CMC Telecom	CMC Telecommunications Infrastructure JSC
Dong Duong	Indochina Telecommunications Joint Stock Company
FPT Telecom	FPT Telecom Company
Government	Office of the Prime Minister
ICANN	Internet Corporation for Assigned Names and Numbers
ISP	Internet service provider
IXP	Internet exchange service provider
GTel	Global Telecommunications Corporation
HTC	Hanoi Telecom Corporation
LOT	Law on Telecommunications
MIC	Ministry of Information and Communications
MobiFone	Vietnam Mobile Telecom Services Company;
MPI	Ministry of Planning and Investment
Netnam	Netnam Corporation
OSP	Online service provider
QCVN	Vietnamese norms
SPT	Saigon Post and Telecommunications Services Corporation
STCV	SaigonTourist Cable Television Co.,
TCN	Sectoral standards
TCVN	Vietnamese standards
TSBL	Telecoms Service Business License
TSMA	Telecommunications specialized management agency
Viettel	Military Electronics and Telecommunications Group
Vinaphone	Vietnam Telecoms Services Company
Vishipel	Maritime Electronics and Telecommunications Company
VNNIC	Vietnam Internet Network Information Centre
VNPT	Vietnam Post and Telecommunications Group
VoIP	Voice-over-Internet Protocol
VTC	Vietnam Multimedia Corporation
WTO	World Trade Organization

TELECOMMUNICATIONS IN VIETNAM*

RUSSIN & VECCHI

I. Introduction

Decree 121/CP of 15 August 1987, promulgated by the Council of Ministers (“**Decree 121**”), created the first legal framework for telecommunications and postal activities in Vietnam. Between 1987 and 1997, Decree 121 was the primary piece of legislation regulating the telecommunications industry.

With the rapid evolution of the industry, especially during the late 1990s, Decree 121 soon became obsolete. On 12 November 1997, the Government issued Decree 109/1997/ND-CP on postal and telecommunications activities (“**Decree 109**”) to replace Decree 121. A number of implementing sub-regulations followed. Most of these regulations had the purpose of protecting the State’s monopoly through tight control of the market.

Vietnam entered into a Bilateral Trade Agreement (“**BTA**”) with the United States in December 2001, in which Vietnam agreed to gradually open the telecommunications sector to United States entities. This commitment also set a schedule. Vietnam became a member of the WTO on 11 January 2007. In its WTO commitments, Vietnam agreed to open telecommunications services to foreign investors under a prescribed schedule. As such, there was a need for a more comprehensive legal framework to manage a fully liberalized market.

Vietnamese telecommunications law has undergone several reformations in order to meet its international obligations. On 25 May 2002, the first Ordinance on Post and Telecommunications was approved by the Standing Committee of the National Assembly and became effective on 1 October 2002 (“**Ordinance**”)¹. The Ordinance was then replaced by the Law on Telecommunications (“**LOT**”) which came into effect on 1 July 2010. The Law on Telecommunications presents the first time that regulations on telecommunications were compiled in a separate comprehensive law. It provides a legal framework for all telecommunications activities.

The LOT includes 63 Articles, which are divided into 10 chapters:

- Chapter I : General regulations;
- Chapter II : Telecoms business;
- Chapter III : Telecoms for public benefit;
- Chapter IV : Setting up networks and telecoms service supply;
- Chapter V : Telecoms operation licenses;
- Chapter VI : Connection and sharing telecoms infrastructure;

* This edition is current through April 2015.

¹ An Ordinance is a legal instrument passed by the Standing Committee of the National Assembly when the National Assembly is not in session. An Ordinance has the same effect as a Law.

- Chapter VII : Telecoms resources;
- Chapter VIII : Management of telecoms technical standards, norms, quality, and fees;
- Chapter IX : Telecoms works; and
- Chapter X : Implementing provisions.

The decree which implements the LOT is Decree 25/2011/ND-CP dated 6 April 2011 of the Government (“**Decree 25**”). Decree 25 replaced Decree 160/2004/ND-CP dated 3 September 2004 of the Government.

Along with the LOT, the Law on Information Technology issued on 29 June 2006, the Law on Electronic Transactions issued on 29 November 2005, the Law on Radio Frequencies issued on 4 December 2009, and other lesser regulations all represent steady progress in the development of legislation on information technology and telecommunications.

II. Specific regulations

1. Status and powers of telecommunications regulators

Under Article 9 of the LOT, the Government is empowered to manage the telecommunications activities of the State. The Ministry of Information and Communications (“MIC”)² is the State body in charge of telecommunications. The MIC has the following powers and duties:

- to promulgate or prepare drafts of legal regulations, technical specifications and standards, economic-technical norms of telecoms strategies and telecoms development plans;
- to implement legal regulations on telecoms, strategies, and telecoms development plans;
- to manage and regulate the telecoms market; to manage the telecoms service business and telecoms operation;
- to actively co-ordinate with the Ministry of Industry and Trade to manage competition in the formulation of telecoms infrastructure and in the provision of telecommunications services in accordance with laws on competition;
- to inspect, verify, and resolve disputes, claims, and complaints, and to deal with violations in telecoms activities;
- to train, foster, and develop human resources; to study and apply science and technology in telecoms activities; and
- to organize international co-operation in the telecoms sector.

The LOT refers to the telecommunications specialized management agency (“TSMA”). This is a specific agency under the MIC that supports the MIC to carry out state management of the telecommunications sector. Decree 25 assigns TSMA following tasks:

- to participate in drafting mechanisms, policies, strategies, plans, and legal regulations on telecommunications;
- to manage the telecommunications market and universal telecommunications;
- to organize the implementation of legal regulations on telecommunications; and
- to carry out other state management missions in the telecommunications sector as delegated by the MIC’s minister.

2. Interconnection between networks

Article 42 of the LOT provides general principles for interconnection between networks. The basic principle is that all telecoms enterprises³ are entitled to connect with each other’s networks and services in order to take advantage of existing infrastructure. Stated differently, a telecommunications enterprise must allow other telecoms enterprises to connect to its

² The MIC (formerly the Ministry of Post and Telecommunications) was established in August 2002 to assume the telecommunications functions of the General Department of Post and Telecommunications, People’s Committees, and certain other Ministries.

³ Article 3.23 of the LOT states that a telecommunications enterprise is one that is incorporated under Vietnamese law and is granted a telecoms business license. Telecoms enterprises include enterprises which provide facilities-based services and enterprises which provide non facilities-based services.

network or services. Interconnection is based on negotiations intended to assure the equality, rights and benefits of the parties as well as the rights and benefits of telecommunications service users and related persons.

A facilities-based enterprise is responsible for providing connection at any point in the telecommunications network provided that it is technically feasible. It should not discriminate in terms of charges, technical standards, network quality nor telecommunications services. The interconnection charges must be calculated on the basis of market price, reasonably separate network components, or service phases without distinguishing service forms.

A private network may connect to a public network based on a written contract between a telecommunications enterprise and the owner of the private network. A private network cannot directly connect to another private network without the written consent of the TSMA.

3. Pricing guidelines

In its accession to the WTO, Vietnam committed to apply price controls in a WTO-consistent fashion. The LOT stipulates the following principles for determining telecommunications prices:

- to respect the rights of telecoms enterprises to determine the price and to compete in terms of price;
- to ensure the legitimate rights and benefits of service users, telecoms enterprises and the State;
- to ensure fair competition and to perform telecoms activities for public purposes; and
- to ensure equality and non-discrimination in the determination and management of telecoms charges, except in cases designed to encourage new enterprises to enter the market.

Telecommunications charges will be calculated on the basis of:

- applicable policies and objectives of telecoms development; regulations on price management and international treaties to which Vietnam is a signatory;
- market price, market demand and supply, and an appropriate correlation with telecoms charges of regional and international countries; and
- no cross compensation among telecommunications services.

A telecommunications enterprise may determine the prices of services that it provides except the prices of services that must be determined by the State. On 13 May 2013, the MIC issued Circular 11/2013/TT-BTTTT promulgating the list of telecommunications services whose actual prices and projected price must be reported. They are:

- Terrestrial fixed telecommunications services: local phone services, data transmission service, image transmission service, conference services, local long distance phone services, international phone services, leased line services, Internet connection services, Internet access services;
- Satellite fixed telecommunications services: phone services, data transmission services, image transmission services, lease line services, Internet access services;

- Terrestrial mobile telecommunications services: phone service, SMS and MMS services, Internet access services (2G, 3G);
- Satellite mobile telecommunications services: phone services, data transmission services, SMS and MMS services, Internet access services (2G, 3G);
- Services of Vinasat satellite system: band lease services, transponder lease package.

4. Telecoms business

a. Telecommunications services' classification

Decree 25 provides non-exhaustive lists of basic telecommunications services and value-added telecommunications services. The MIC is entitled to add more services to each list.

Basic telecommunications services include: (a) talking services; (b) facsimile services; (c) data transmission services; (d) image transmission services; (e) message services; (f) video conference services; (g) leasing private channel services; (h) Internet connection services; (i) and other basic telecommunications services as regulated by the Ministry of Information and Communications ("MIC").

Value-added telecommunications services include: (i) e-mail services; (ii) voice mail services; (iii) value-added facsimile services; (iv) Internet access services; and (v) other value-added telecommunications services as regulated by the MIC.

On 18 May, 2012, the MIC issued Circular 05/2012/TT-BTTTT to classify the telecoms service ("**Circular 05**"). Circular 05 sets forth different criteria to categorize telecommunications services:

- According to technological characteristics, transmission methods, here are fixed telecommunications services (ie, terrestrial fixed telecommunications services, satellite fixed telecommunications services); and mobile telecommunications services (ie, terrestrial mobile telecommunications services, satellite mobile telecommunications services, maritime mobile telecommunications services, air mobile telecommunications services);
- According to payment method, here are pre-paid services and post-paid services; and
- According to scope of communication, here are home-network services (i.e. services sending, transmitting, receiving and processing information among services users of the same telecommunications network); and inter-network services (ie, services sending, transmitting, receiving and processing information among service users of different telecommunications networks).

Circular 05 introduces the term "additional telecommunications services" which is intended to include more functions, utilities for telecommunications service users. Additional telecoms services are integral parts of and are supplied together with basic and value-added telecommunications services. They include service showing the number of callers, service which hides the number of callers, service of catch phone display, service waiting call, service of call transfer, call barring, service of abbreviated dialing, and additional telecommunications services as prescribed by the MIC.

b. Telecoms enterprises and agencies

A telecoms enterprise that provides non facilities-based telecommunications services has the following rights and obligations:

- to construct, install and own telecoms equipment systems and transmission lines within its units and public utility points to provide telecommunications services to telecoms service users;
- to hire telecoms transmission lines to link its telecoms equipment system, units and public utility points together and to connect to public telecoms networks of other telecoms enterprises;
- to hire transmission lines or buy telecoms output of other telecoms enterprises in order to resell to telecoms service users;
- to sub-lease telecoms infrastructure to other telecoms enterprises;
- to allocate telecoms resources in accordance with master plans and regulations on the management of telecoms resources;
- to fulfill public utility telecoms obligations as assigned by the State and to make financial contributions to the Vietnam Public Utility Telecoms Service Fund⁴;
- to be responsible for service quality according to standards that have been registered or declared; to assure that the calculation of telecoms charges in a telecoms service use contract are correct, sufficient, and exact;
- to be controlled by the competent state agencies and to implement regulations on the assurance of telecoms infrastructure and information security; and
- to make periodic reports on or to be requested by specific telecoms management agencies to provide certain business activities; and to be responsible for the accuracy and timeliness of contents and data contracts.

Along with the foregoing rights, a telecoms enterprise that provides facilities-based telecommunications services has the following additional rights:

- to use the aerial space, land surface, underground space, river beds, and sea beds to construct telecoms infrastructure in accordance with master plans, technical standards and norms;
- to lease telecoms infrastructure to other telecoms enterprises; and
- to provide telecommunications services for the benefit of the public.

A telecoms service agent has the following rights and obligations:

- to establish terminal equipment systems at locations that are used to provide telecommunications services for telecoms service users as agreed in telecoms service agency contracts;
- to provide and resell telecommunications services in accordance with the LOT;
- to refuse to provide services for telecoms service users who violate the LOT or upon the request of competent state agencies;

⁴ The Vietnam Public Utility Telecoms Service Fund is a non-profit financial organization managed by the State. Its purpose is to assist in the realization of the State's policies on the provision of universal telecommunications services. The Vietnam Public Utility Telecoms Service Fund is financed by: (i) contributions from telecoms enterprises in proportion to their income; (ii) sponsorship and voluntary contributions from local and foreign organizations and individuals; and (iii) other legitimate sources.

- to comply with regulations with the assurance of telecoms infrastructure and information security;
- to request a telecoms enterprise that is a party to a telecoms service agency contract to guide and provide information on telecommunications services and to be inspected and supervised by such telecoms enterprise;
- to comply with local regulations pertaining to the time within which to provide telecommunications services; and
- to provide telecommunications services in accordance with the quality and telecoms charges stipulated in telecoms service agency contracts.

c. *Telecommunications resale*

Under the LOT, the resale of telecommunications services means that a telecoms enterprise or telecoms service agency provides telecommunications services to telecoms service users on the basis of leasing transmission lines or purchase of telecoms traffic under a contract with another telecoms enterprise. A telecommunications enterprise may hire transmission lines or buy telecoms output of other telecoms enterprises in order to resell to telecoms service users. Telecommunications services may also be resold by a telecommunications agency.

Decree 25 further guides that in order to resell fixed telecommunications services to users in a given area, an agent must obtain a business registration certificate and enter into an agency agreement with a telecommunications enterprise. In order to resell fixed telecommunications services at at least two points or to resell mobile telecommunications services, an enterprise must obtain a license to provide telecommunications services.

These provisions are still rather general. Further detailed guidance on technical and professional matters relating to the resale of telecommunications services is expected. We believe such guidance will deal with: the list of telecommunications services permitted for resale, specify individuals and organizations permitted to resell services, outline the scope of permissible resale, impose tariffs for the resale of services, the numbering protocol, interconnection, and channel leasing.

d. *Ownership in telecoms enterprises*

The State holds the controlling shares in telecoms enterprises that provide facilities-based telecommunications services, which play an important role in operating the national telecoms infrastructure and which have direct influence on socio-economic development, national security, and defense.

In order to ensure fair competition, Decree 25 limits the percentage of charter capital that an enterprise or an individual can own in enterprises that operate in the same telecommunications services market. If an enterprise or individual owns more than 20% of the charter capital or shares in a telecommunications enterprise, it is not allowed to own concurrently more than 20% of the charter capital or shares in another enterprise in the same telecommunications market. Such restrictions, however, only apply to terrestrial mobile communications services as listed in Circular 10/2012/TT-BTTTT of the MIC dated 10 July 2013.

e. Investment in the telecommunications sector

Decree 25 sets out the requirements on legal capital⁵ and investment commitments in relation to different categories of telecommunications networks. The requirements can be summarized in the following table:

Networks	Coverage area	Legal capital (billions of VND)	Investment commitments (billions of VND)
Fixed terrestrial network without using radio spectrum	A city/province	5	15 within first 3 years from the date license is issued
	From 2 to 30 cities/provinces	30	100 within first 3 years from the date license is issued.
	More than 30 cities/provinces	100	300 within first 3 years from the date license is issued.
Fixed terrestrial network without using radio spectrum	From 15 to 30 cities/provinces	100	300 within first 3 years from the date license is issued.
	More than 30 cities/provinces	300	1,000 within first 3 years from the date license is issued, and 3,000 within 15 years.
Mobile terrestrial network using radio channels		20	60 within first 3 years from the date license is issued.
Mobile terrestrial network without using a radio spectrum (virtual mobile network)		300	1,000 within first 3 years from the date the license is issued and 3,000 within 15 years.
Mobile terrestrial network using a radio spectrum (virtual mobile network)		500	2,500 within first 3 years from the date the license is issued and 7,500 within 15 years.
Satellite telecommunications network		30	100 within first 3 years from the date license is issued.

⁵ The legal capital is the minimum capital that is required by law to set up an enterprise.

Foreign investors are subject to additional requirements. In addition to the basic licenses required by telecommunications legislation, foreign investors who intend to provide telecommunications networks and services must first obtain an investment certificate issued by the licensing authorities. If the project is not covered by a plan approved by the Prime Minister, the licensing authority must seek opinions on the project from the MPI, the MIC, and any other relevant organizations. They must then request that the Prime Minister render a decision on the investment policy, adjust the national plan, or open the investment market further to foreign investment. The Law on Investment and the Law on Enterprises of 29 November 2005 and their implementing regulations provide rules and criteria for any foreign invested enterprise to receive an investment certificate.

The ownership proportion of a foreign investor in a telecoms enterprise must comply with investment regulations and international treaties to which Vietnam is a signatory. In particular:

BTA

Under the BTA, which came into effect on 10 December 2001, Vietnam committed to opening the following major telecommunications services to US investors:

- As from December 2003 (December 2004 in the case of Internet services), US investors were allowed to set up joint ventures with a maximum stake of 50% in order to provide value-added telecommunications services;
- As from December 2004, US investors were allowed to set up joint ventures with a maximum stake of 49% to provide basic telecommunications services, including wireless communications services; and
- As from December 2006, US investors have been allowed to set up joint ventures with a maximum stake of 49% to provide voice telephone services, including fixed local, long distance, and international call services.

Bilateral agreement with the European Union

In October 2004, Vietnam and the EU concluded a bilateral agreement in anticipation of Vietnam's entry into the WTO. Under this agreement, Vietnam made commitments in a large range of sectors, including transport, financial services, postal and courier, construction, distribution, environmental, professional and other business services, telecommunications and tourism. Commitments include cross border provision of services and commercial establishments.

Vietnam's commitments to the WTO

In the negotiations for Vietnam to become a member of the WTO, other WTO members, in particular the United States, EU, Japan, and South Korea, required Vietnam to commit to remove restrictions on foreign investment in the telecommunications sector.

In its accession to the WTO, Vietnam made commitments in certain specific areas:

- Facilities-based telecommunications services: Upon Vietnam's accession to the WTO on 11 January 2007, joint ventures with telecommunications service

suppliers licensed in Vietnam were allowed. Foreign investors may hold a maximum stake of 49% of legal capital. For US investors, Vietnam had already made this commitment in the BTA.

- Non facilities-based telecommunications services: Since accession, joint ventures with telecommunications service suppliers licensed in Vietnam have been allowed. Foreign investors may hold a maximum stake of 51% of the legal capital of a joint venture. Beginning January 2010, three years after accession, joint ventures have been allowed without any limitation on the choice of partners. The stake of foreign investors, however, may not exceed 65% of legal capital. For virtual private networks and value-added services (except Internet access services (“IAS”)), joint ventures have been allowed since accession, without limitation on the choice of partners. The stake of foreign investors, however, may not exceed 70% of legal capital.

f. Competition in the telecommunications sector

Like other enterprises, a telecoms enterprise must follow general regulations on competition under the Competition Law, which came into effect on 1 July 2005. Telecoms enterprises or a group of telecoms enterprises that dominate the telecoms market and hold “essential means”⁶ are prohibited from:

- carrying out cross compensation of telecommunications services in order to engage in unfair competition;
- using its advantage in terms of its network and essential means in order to hinder market access or to cause limitations and difficulties to other telecoms enterprises;
- using information obtained from other telecoms enterprises in order to engage in unfair competition; and
- not timely providing other telecoms enterprises with technical information of essential means and commercial information necessary for them to provide telecommunications services.

A telecoms enterprise, a group of telecoms enterprises that dominate the telecoms market, or a telecoms enterprise holding essential means are required to keep separate statistics and accounting records for the telecommunications services they provide in order to determine the cost of telecommunications services for competition purposes. Telecoms enterprises that together have a market share ranging from 30% to 50% after shares are consolidated must notify the TSMA prior to economic consolidation. If the market share exceeds 50%, the Ministry of Industry and Trade⁷ will accept the exemption upon receipt of MIC’s exemption acceptance.

⁶ Article 3.19 of the Law on Telecommunications defines “essential means” as important parts of the telecoms infrastructure which is exclusively or largely held by one or some telecoms enterprises in the telecoms market and it is economically or technically infeasible to establish new parts of the telecoms infrastructure to replace them.

⁷ Under the Law on Competition, the Ministry of Industry and Trade is the state authority in charge of competition management.

The TSMA is responsible for settling telecommunications competition cases within 30 days from the date of receipt of a dossier. Although, the parties in a competition case must comply with the TSMA's decision, they may appeal the decision if they do not agree with it.

On 15 November 2012, the MIC issued Circular 18/2012/TT-BTTTT on a List of Dominant Telecoms Enterprises, Groups of Telecoms Enterprises. They are:

No.	Telecommunications services	Dominant Enterprises/ Groups of Enterprises
<i>I</i>	<i>Terrestrial fixed telecommunications services</i>	
1	Local telephone service	VNPT; Viettel
2	Domestic long-distance telephone service	VNPT
3	International telephone service	Viettel VNPT
4	Local leased line service	VNPT Viettel
5	Domestic long distance leased line service	VNPT Viettel
6	International leased line service	VNPT Viettel
7	Broadband Internet access service	VNPT FPT Telecom Viettel
<i>II</i>	<i>Terrestrial mobile information services</i>	
1	Phone service	Viettel MobiFone VNPT
2	Messaging service	Viettel MobiFone VNPT
3	Internet access service	Viettel MobiFone VNPT

5. Establishment of telecoms networks and provision of services

Telecoms networks are established and developed, with reference approved strategies, master plans, and technical standards.

To provide services, a telecommunications service provider must follow the rules on connection, management of telecommunications resources, telecommunications standards and norms, and related regulations. Telecommunications services can be provided directly or can be resold on the basis of contracts executed between telecoms enterprises/agencies and users. Contracts must be registered with the competent authorities. If a telecommunications provider fails to comply with the terms of the contract, it must reimburse all or a part of the service fees it has collected. This is the first time that the law provides for indemnification, and the law is rather specific.

- A telecoms enterprise that fails to provide timely services and agreed quality must refund all or a part of the charges it has collected;
- A telecoms enterprise need not compensate for indirect damages or unrealized profit because of its failure to provide agreed telecommunications services on time;
- Either party must compensate the other party for direct material damages that it causes.

6. Telecommunications licenses

a. License categories

There are two categories of licenses: (i) telecoms service business licenses, and (ii) telecoms operations licenses.

A *telecoms service business license* (“**TSBL**”) can be either:

- a license to set up a public telecoms network with a term of 15 years or less; it is issued to a telecoms enterprise that provides facilities-based services; or
- a license to provide telecommunications services with a term of 10 years or less; it is issued to a telecoms service provider that does not own any infrastructure.

A *telecoms operations license* is:

- a license to lay telecoms cables beneath Vietnamese waters, with a term of 25 years or less; issued to an organization that installs telecoms cables under the sea or through Vietnam’s internal waterways, territorial waters, above the continental shelf, or through Vietnam’s exclusive economic zones;
- a license to set up a private telecoms network with a term of 10 years or less; it is issued to an organization that establishes a private network;
- a license to test existing networks and telecommunications services with a term of one year or less; it is issued to an organization that tests telecoms networks and services.

A telecoms license is not required in connection with certain activities/situations:

- trading of telecoms goods;
- provision of telecommunications services by telecoms service agents;
- lease of transmission lines to provide telecoms application services; and
- service of private telecoms networks of state/communist party organs or for national security and defense purposes.

On 13 May 2013, the MIC issued Circular 12/2013/TT-BTTTT (“**Circular 12**”) to guide the issuance of TSBL (ie, TSBL to set up a public telecoms network and TSBL to provide telecommunications services). According to Circular 12, in order to provide facility-based services, company must obtain a TSBL to set up a public telecoms network and a TSBL to provide the telecommunications services that it intends to provide. A license to set up a telecoms network is not required for a company that

provides non-facility-based services. In order to obtain a TSBL, a company must satisfy the following conditions:

- Business lines: Company's business lines, as recorded in its Business Registration Certificate/Investment Certificate, must cover telecommunications services;
- Financial capacity: Company must satisfy the requirement on investment capital (see Part II, Section 4(e) above) and its financial capacity must be sufficient to realize its proposed business and technical plans;
- Organization and personnel: Company's organization and personnel must be suitable for its business and technical plans and the plan to protect telecoms infrastructure and information safety;
- Business and technical plans: Its business and technical plans must: (x) be in line with the national strategy, telecoms development master plan, and telecoms resources plan; (y) be feasible and comply with regulations on inter-connection, price, norms, standards, quality of telecoms network and services; and (z) have feasible plan on allocation of telecoms numbers and radio spectrums (if any); and
- Telecoms infrastructure safety and information security: Company must have plans to protect telecoms infrastructure and information safety.

The application for issuance of a TSBL to set up a public telecoms network includes the following documents:

- Application made on a standard form;
- Business Registration Certificate/Investment Certificate;
- Charter;
- A business plan for the first five years made on a standard form;
- A technical plan for the first five years made on a standard form;
- Documents to prove that the company satisfies requirements on legal capital; and
- A commitment letter by which the company undertakes to comply with the TSBL, once it is issued.

The application for issuance of a TSBL for provision of telecommunications services must include the following documents:

- Application made on a standard form;
- Business Registration Certificate/Investment Certificate;
- Charter;
- A business plan for the first five years made on a standard form;
- A technical plan for the first five years made on a standard form; and
- Draft of the contract on telecoms service use (for post-paid subscribers), draft of the notice on the terms of telecoms service use (for pre-paid subscribers). This requirement applies to applications to provide terrestrial fixed phones; terrestrial mobile information services, or Internet access services.

The regulatory timeframe for the license issuance is 45 working days.

The company must file an application to amend/supplement its TSBL in the following circumstances: (i) change of the company's name; (ii) change of the locations which the terrestrial public teleoms network covers, but remains in the registered area (i.e province, region, or country); (iii) supplementation of other telecommunications services, provided that the licensing authorities in charge of the supplemental telecommunications services will be the same; or (iv) cease to provide certain licensed telecommunications services. Notice is only required if there is a change in the company's address, legal representative, charter capital or investment capital (but continues to satisfy the regulatory requirements on charter capital and investment capital), or a change in shareholders' shareholding.

The company must file an application for a new license in the following circumstances: (i) change of its founding shareholder; (ii) the company is restructured through split, merger, acquisition, or conversion; (iii) change of the registered areas of service covering (ie, province, region, country); (iv) change in demand on in use of teleoms numbers, radio spectrums; or (v) supplementation of other telecommunications services that are managed by other licensing authorities.

b. Fees on telecommunications operation rights

A teleoms enterprise must pay the State a fee to establish a network and a fee to provide telecommunications services.

- The fee for license to establish a public network must be paid annually and the amount of payment is determined on the basis of: (i) the scale of the teleoms network and the income generated from the telecommunications services; (ii) the quantity and value of attributed teleoms resources; (iii) usage of aerial space, terrestrial space, underground space, river bed, or sea bed needed to establish a teleoms network, teleoms works, and points to provide public telecommunications services;
- The lump sum fee for the entire term of the license applies to: (i) establishing a private network; or (ii) establishing a network and providing telecommunications services on an experimental basis;
- The lump sum fee for the entire term of the license applies to a license to install telecommunications cables under the sea. An additional fee must be paid whenever a ship enters to survey, install, repair, or maintain the cables; and
- The fee to provide telecommunications services must be paid annually as a percentage of revenue, but the fee will not exceed 1% of the revenue generated by the telecommunications services.

c. License withdrawal

The LOT lists the circumstances under which the licensing authorities may consider withdrawal of a teleoms license. Among other things, a teleoms license may be withdrawn if the teleoms enterprise commits one of the following acts:

- fails to comply with the terms of the teleoms license, causes material damage to the rights or interests of other organizations and individuals;

- fails to implement the license within two years from the date the license was issued; or
- stops providing the licensed telecommunications services for one year without notifying the MIC.

A telecoms enterprise may apply for a new telecoms license if, after one year from the date on which its telecoms license is withdrawn, it pays all damages it owes and satisfies other conditions for issuance of a new telecoms license.

7. Telecoms resources

Telecoms resources are managed by the State in accordance with strategies and plans to develop a national telecoms system designed to optimize the establishment of networks and the provision of telecommunications services. Telecoms resources are allocated/attribution on the basis of equality and transparency. Priority in the allocation of telecommunications numbers storage and Internet resources is reserved for telecoms enterprises that are able to provide services quickly and that are able to provide services to remote regions, border areas and islands, and for purposes of public telecoms activities. Telecoms resources are allocated/attribution: (i) through auction and beauty contests in the case of rights to use telecommunications number storage or Internet resources that have a high commercial value⁸ and the demand for which exceeds capacity; (ii) directly under a master plan and on the basis of first to register, first approval or on the basis of first use; and (iii) through other methods provided by law. An organization/individual who is allocated a telecoms number store/Internet resource can use, lease, or re-allocate its telecoms number store/Internet resource in accordance with a decision on the allocation and based on regulations of management and the use of telecommunications number storage/Internet resources.

Domain names (except the national domain name “.vn,” which is reserved to agents of the Communist Party, the State, or other organizations as provided by the MIC), and telecommunications number storage/Internet resources allocated to an organization/individual through auction, are transferable. The following conditions apply to the transfer of telecommunications number storage/Internet resources:

- transferor has legal use rights over the telecoms number storage, Internet resources;
- transferee is eligible to operate or invest to exploit and use telecoms numbers and Internet resources;
- taxes in connection with the transfer must be paid;
- legitimate rights and the interest of related organizations and individuals are assured; and
- transfer of any telecommunications number storage, Internet resource that has been granted by auction must be approved by the MIC.

⁸ The Law on Telecommunications does not explain the term “telecommunications number storage or Internet resources which have a high commercial value”. It is commonly understood that the term refers to telecommunications number storage or Internet resources which carry the accessibility for an enterprise to increase its market share and profits significantly.

Telecommunications number storage/Internet resources may be revoked in the following circumstances:

- for the national or public interest, socio-economic development, or national defense and security. The State will compensate the organization/individual whose telecommunications number storage/Internet source has been revoked;
- purpose and use of telecommunications number storage and Internet resources is no longer suitable to the existing telecommunications number storage and Internet resource plan. The State will compensate the organization/individual whose telecommunications number storage/Internet source is so revoked; or
- an organization/individual who has been granted telecoms number storage or Internet resources and fails to pay the allocation fee and/or use fee.

8. Telecommunications quality

According to Article 51 of the LOT, Vietnam’s system of telecommunications standards includes:

- national standards on telecommunications issued by the Ministry of Science and Technology;
- basic standards of telecommunications products, interconnection works, network quality, and services; and
- international and foreign standards applicable in Vietnam in accordance with regulations on standards and quality.

The MIC issues national technical norms for telecoms equipment, telecoms connection, telecoms works, and the quality of networks and services. The MIC is also in charge of promulgating a list of telecoms equipment that may be unsafe and a list of networks and services that must comply with technical standards. Those lists may be amended from time to time.

Before any telecoms terminal equipment that is on a list of telecoms equipment thought to be hazardous may circulate in the market or link into public telecoms networks, a conformity certificate must be obtained and placed on the equipment. Before using network equipment to calculate prices, a telecoms enterprise must verify that the equipment is on the list of telecoms equipment that must be certified. A telecoms enterprise must declare, examine, and supervise the quality of all network and telecommunications services that are on a list of services for which certification is compulsory. The Telecoms Department under the MIC is in charge of management of the quality of telecommunications equipment and services.

The most recent list of telecommunications services subject to quality control was issued in connection with Circular 02/2013/TT-BTTTT of the MIC dated 22 January 2013. The following is a list of those services and the Vietnamese standards that apply:

Services	Applicable standards
Terrestrial fixed telecommunications service - Telephone services	QCVN 35:2011/BTTTT
Terrestrial mobile telecommunications service - Telephone	QCVN 36:2011/BTTTT

services	
Terrestrial fixed telecommunications service - Internet ADSL access services	QCVN 34:2011/BTTTT

The most recent list of telecommunications works⁹ subject to quality control was issued in connection with Decision 17/2011/TT-BTTTT of the MIC dated 30 June 2011. The following is a list of the telecoms works subject to quality control:

Telecommunications stations	Applicable standards
Radio wave transmission station (radio and television)	TCN 68-141: 1999 (1) TCN 68-135: 2001
Domestic long-distance microwave transmission station	TCN 68-141: 1999 (1) TCN 68-135: 2001
Base transceiver station	TCN 68-141: 1999 (1) TCN 68-135: 2001 TCVN 68-255: 2006 TCVN 3718-1: 2005
<i>Note: (1) Only standards for grounding lightning protection systems apply.</i>	

The MIC promulgated the Regulations on Management of the Quality of Telecommunications Services with Circular No. 08/2013/QD-BBCVT of 26 March 2013 (“**Circular 08**”). Circular 08 provides guidance on:

- quality declarations;
- quality reports;
- quality examinations;
- quality supervision; and
- disclosure of telecoms service quality.

Telecoms enterprises that provide telecommunications services and that are subject to quality control must declare the quality standards to which they will adhere. These declared quality standards must be in line with required quality standards. In order to declare its quality standards, an enterprise must send its Declaration of Telecommunications Service Quality to the Telecoms Department. If accepted, the Telecoms Department will issue a Receipt. The enterprise must post the Receipt of Declaration of Telecommunications Service Quality and the List of Quality Standards of its telecommunications services on its website and in its business offices.

An enterprise that provides telecommunications services other than those that are subject to quality control must nevertheless declare the quality standards of those services on its website. The declaration procedure described above is encouraged.

⁹ Telecommunications works mean construction work, including inactive telecommunications technical infrastructure (buildings, stations, poles, sewers, and tanks) and installed network equipment.

Enterprises are required to report the quality status of the network and services each quarter or upon request of the Telecoms Department.

9. Telecoms works

Telecoms enterprises are granted rights to use space, land surface, underground rivers and seabed routes in their construction networks. Enterprises receive only land use rights, not actual land ownership.

When investing in important telecoms works which relate to national security or locations providing public telecommunications services, investors must clearly determine the area of land that needs to be used, the compensation, and site clearance plans after the competent state agency approves and allocates the land. Based on the passive telecoms work plans and approved land use plans, competent People's Committees will allocate the land for the construction of important telecoms works that relate to national security or to public telecommunications services. The People's Committee also cooperates with the investor to implement site clearance.

In practice, this process takes quite some time, as many permits are required. Increasingly, People's Committees in major urban areas also want telecoms enterprises to co-ordinate their construction work with public utilities and road building programs. There have been cases where People's Committees have refused permission to telecoms enterprises to build ducts in congested urban areas.

10. Other matters

a. Telephone number allocation

The MIC is responsible for allocating telephone numbers. The MIC allocates blocks of numbers to telecoms enterprises, which then assign them to their customers. Telecoms enterprises must, in turn, report their allocation plan and the status of telephone numbers and codes allocated to them. Unused numbers and codes must be returned to the Ministry.

b. Number portability

A subscriber number is specific to each telephone network. Currently, a change in network results in a change in a subscriber's number. This applies to both fixed and mobile networks. It is reported that the MIC has worked out a scheme to allow a subscriber to keep its number when it moves to another network. It is expected that number portability will be possible from January 2017. Telecommunications codes and numbers are allocated under Circular 22/2014/TT-BTTTT promulgating the master plan on telecoms numbers issued by the MIC on 22 December 2014.

c. Internet telephony

According to Circular 05/2008/TT-BTTTT dated 12 November 2008 on the Management, Provision, and Use of Internet Services and Electronic Information on the Internet, Internet Service Providers ("ISP") are allowed to provide internet telephony. ISPs can provide local and international PC-to-PC phone service and outbound PC-to-phone service. ISPs must: (i) have a billing system, a system to manage the customers' data, and

a system to manage services in Vietnam, and (ii) provide sufficient information in connection with the payment of service fees and in order to determine customers' claims in connection with service fees and quality.

Currently, the MIC is drafting a new Circular on the management, provision and use of internet-based calls and texting services (“**Draft Circular**”). In the Draft Circular, internet-based calls and texting Services (OTT Services) are categorized as a basic telecoms service. In order to provide OTT Services and to be able to charge for the services, the service provider must obtain an enabling license. Moreover, it must comply with regulations on fee management and service quality applicable to traditional telecommunications services in Vietnam. A license to provide telecoms services is not required if the OTT Service is provided free of charge.

In the draft, an OTT service provider is prohibited from connecting to the network to provide Internet-based calls directly to local phone subscribers. In order to provide Internet-based calls/texting services and to be able to charge local phone subscribers for these services, the OTT service provider must enter into an agreement with a company that provides fixed or mobile telecoms services.

The Draft Circular imposes various obligations on an offshore OTT service provider. An offshore OTT service provider that charges for OTT services or has more than 1 million subscribers (to use its free OTT services), must have at least one host server in Vietnam and must enter into a trade agreement with a local company that is licensed to provide OTT Services.

This circular, once approved, will certainly burden the operations of OTT service providers, especially offshore OTT service providers in Vietnam.

d. Frequency allocation

Matters related to radio frequencies are regulated by the Law on Radio Frequencies.¹⁰ In principle, the State manages all radio frequencies and radio transmitters, and management must take national interests and sovereignty into account in making decisions.

Licenses are required for the use of radio frequencies and special radio frequency equipment as follows:

- use of radio frequency and radio frequency equipment with a maximum term of 10 years;
- use of spectrum band with a maximum term of 15 years; and
- use of frequency and satellite orbit with a maximum term of 20 years.

A license may be granted through one of the following methods: (i) directly on the basis of an application for a license; (ii) via a competition for the right to use a particular radio frequency; or (iii) via an auction of the right to use a radio frequency. Methods (ii) and (iii) apply to spectrum bands, radio frequencies that have high commercial value, and

¹⁰ The Law on Radio Frequencies came into effect on 1 July 2010. Previously, provisions on frequencies were included in the Ordinance on Post and Telecommunications.

where use demand exceeds allocation capacity. The right to use radio frequency is transferable if it is granted via an auction and the MIC approves.

e. Domain name registration

On 15 July 2013, the Government issued Decree 72/2013/ND-CP on Management, Provision, and Use of Internet Services and Online Information (“**Decree 72**”). Decree 72 provides that an entity or individual may register a “.vn” domain name or international domain name. Except for domain names reserved for auction, a “.vn” domain name is allocated on the principle of first-registration, first-use.

A “.vn” domain name is registered through an organization that satisfies the following conditions:

- (i) is a Vietnamese enterprise or a foreign organization that has entered into an agreement with an Accredited Registrar of Internet Corporation for Assigned Names and Numbers (“**ICANN**”);
- (ii) its business lines permit domain name registration;
- (iii) has appropriate personnel and technical capacity; and
- (iv) enters into an agreement with VNNIC to provide domain name registration.

An international domain name is registered through an organization that satisfies the following conditions:

- (i) is a Vietnamese enterprise;
- (ii) its business lines permit domain name registration; and
- (iii) has entered into an agreement with an Accredited Registrar of ICANN to provide the service of domain name registration in Vietnam.

f. Allocation, issuance, and withdrawal of Internet addresses and Autonomous System Numbers (ASN)

The MIC registers Internet addresses and ASN with international organizations and then allocates them to enterprises that provide Internet services and to other members having Internet addresses. An enterprise that provides Internet services may re-allocate the Internet addresses that it is allocated by the MIC, to its Internet subscribers.

An enterprise that receives Internet addresses and ASNs directly from international organizations must report them to the MIC and comply with applicable regulations.

g. IPv6 technology

Decree 72 gives priority to the development and use of IPv6 technology. The research, manufacture, and import of equipment or software that uses IPv6 technology is eligible for incentives and support under the Law on High Technologies (eg, tax incentives). Enterprises that provide Internet services are encouraged to develop networks using IPv6 technology. The objective is that: (i) all equipment and software manufactured in Vietnam or that is imported must support IPv6 technology; and (ii) the manufacture and import of software and equipment that do not support IPv6 will be restricted.

III. Market overview

1. Service providers

Companies licensed to set up public telecoms networks are: Vietnam Post and Telecommunications Group ('VNPT'); Saigon Postel ('SPT'); Gtel Mobile; FPT Telecoms; Hanoi Telecoms; Vishipel; Viettel Group; VTC; Dong Duong, CMC Telecoms; SCTV, and AVG. Except for AVG, all other companies have already set up their public telecoms networks.

Below is a list of telecoms operators and the services they provide:

Services	Number of operators	Operators
Fixed telephone services	11	VNPT, Viettel, SPT, FPT, VTC, Dong Duong, CMC Telecom, HanoiTelecom, Gtel. SCTV, Vishipel.
Mobile communications services (2G)	06	Vinaphone, MobiFone, Viettel, Gtel Mobile, SPT, HanoiTelecom
Mobile communications services (3G)	04	Vinaphone, MobiFone, Viettel, and Hanoi Telecom ¹¹

According to the MIC's database, by the end of 2013¹², the market shares of the largest players in the fixed-phone and mobile phone markets were as follows:

Fixed phone

Enterprises	Market share of fixed-phone subscribers (%)
FPT Telecoms	0.32
SPT	1.59
Viettel	21.51
VNPT	76.50
Other	0.08

2G and 3G mobile-phone

Enterprises	Market share of 2G and 3G mobile-phone subscribers (pre-payment and post-payment) (%)
GMobile	3.22
VietnamMobile	4.07
MobiFone	31.78
Vinaphone	17.45
Viettel	43.48

¹¹ Hanoi Telecom applied for a 3G license.

¹² 2012 is the latest year for which statistics have been compiled.

3G mobile-phone

Enterprises	Market share of 3G mobile-phone subscribers (pre-payment and post-payment) (%)
VietnamMobile	2.16
MobiFone	33.56
Vinaphone	22.52
Viettel	41.76

The market share of Internet subscribers by the end of 2013 are allocated as follows:

Internet broadband

Enterprises	Market share (%)
SPT	0.22
SCTV	0.65
Viettel	38.99
VNPT	51.27
FPT Telecom	6.17
CMC Telecom	0.58
Others	0.15

Internet broadband 3G

Enterprises	Market share (%)
Viettel	47.75
VNPT	49.79
HTC	2.46

The companies that are licensed to test Wimax are VNPT, FPT Telecoms, Vishipel, Viettel, VTC, G-Tel, Saigon Postel, Vietsopetro, and Indochina Telecoms. VNPT is licensed to resell services on an experimental basis. According to Ministry of Information and Communications data, by January 2014, 56 enterprises had obtained licenses to provide Internet services (OSP, ISP, and IXP licenses) in accordance with Decree 72.

2. Market development

A national strategy on Information Technology and Telecommunications through 2010 and development orientation through 2020 was approved by Decision 246/2005/QĐ-TTg dated 6 October 2005. Vietnam's Telecommunications and Internet Development

Plan through 2010, approved by Decision 32/2006/QĐ-TTg of the Prime Minister dated 7 February 2006 (“**Decision 32**”) provided further detail on Vietnam’s national strategy. On 7 July 2007, the MIC issued Instruction 07/CT-BBCVT on the Orientation of Information Technology and the Telecommunications Development Plan from 2011 to 2020 (“**Instruction 07**”). According to Instruction 07, Vietnam intends to accelerate development of the information technology and telecommunications industry by 20-30% per year. A further objective is to give people access to high quality telecommunications services at low prices. Vietnam’s objective is to reach a medium technology ranking in the region. In practice, Vietnam’s telecommunications market has developed rapidly during the last 10 years. The total revenue of the telecommunications industry increased from US\$ 2.77 billion in 2006 to US\$ 9.41 billion in 2010, reduced to US\$ 7 billion in 2011, and then increased to US\$ 8.47 billion in 2012. In 2013 the revenue fell to US\$7.37 billion. According to MIC’s statistics, by December 2013, Vietnam reached 131.6 million of mobile phone subscribers. As a result of the Government’s determination to deal with the situation whereby one person uses many mobile SIM cards at the same time this number dropped to 123.74 in 2013. The number of fixed phone subscribers reached a peak of 17.43 million subscribers in 2009 and has fallen since then. From 2009 to 2013, the number of fixed phones subscribed dropped nearly two thirds. It was only 6.73 subscribers in 2013. The main reason for such decrease, of course, is that customers now prefer using mobile phones to using fixed line phones. Besides, mobile phone operators have launched various promotion programs to attract new subscribers, especially pre-paid subscribers.

IV. Conclusion

During the last decade, the telecommunications sector of Vietnam has developed dramatically. Regulations have been promulgated to try to keep pace with market changes. Various matters, however, have still not been addressed or have been inadequately addressed. Procedures and conditions to obtain licenses are not yet standardized.

This poses a challenge to both local and foreign telecommunications investors. Under its commitments to the WTO, Vietnam pledged to open the local market to foreign investors. This gives customers access to higher quality telecommunications services at competitive prices. Various commercial arrangements between foreign investors and local telecoms enterprises have indeed been executed. However, due to various practical factors, access to foreign investors has not reached the level permissible by Vietnam's commitments to WTO. Certain foreign investors (e.g. VimpelCom, SK Telecoms) have left Vietnam market.

The new Law on Telecommunications is expected to create a more transparent environment for activities in the telecommunications sector and to help Vietnam reach its goal of becoming one of the leaders of the ASEAN countries in technology and telecommunications by 2020.