

TELECOMMUNICATIONS IN VIETNAM

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GLOSSARY

ADSL	Asymmetric Digital Subscriber Line
BTA	Vietnam-US Bilateral Trade Agreement
EVN Telecom	Vietnam Power Telecoms (previously, Electricity Telecommunications Company)
FPT Telecom	FPT Telcom Company
Government	Office of the Prime Minister
ICTQC	Directorate of Information and Communications Technology Quality Control
ISP	Internet service provider
IXP	Internet exchange service provider
LOT	Law on Telecommunications
MIC	Ministry of Information and Communications
MobiFone	Vietnam Mobile Telecom Services Company;
MPI	Ministry of Planning and Investment
OSP	Online service provider
QCVN	Vietnamese norms
SPT	Saigon Post and Telecommunications Services Corporation
TCN	Sectoral standards
TCVN	Vietnamese standards
TSMA	Telecommunications specialized management agency
Viettel	Military Electronics and Telecommunications Group
Vishipel	Maritime Electronics and Telecommunications Company
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.

* This edition is current through April 2013.

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.

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;
- 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 most recent decree implementing the LOT is Decree 25/2011/ND-CP dated April 6, 2011 of the Government (“**Decree 25**”). Decree 25 replaced Decree 160/2004/ND-CP dated September 3, 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, 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 telecoms 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 telecommunications 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 telecommunications enterprises to connect to its network or services. Interconnection is based on negotiations

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. Telecommunications enterprises include enterprises which provide facilities-based services and enterprises which provide non facilities-based services.

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 telecoms 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.

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 MIC.

Value-added telecommunications services include: (a) e-mail services; (b) voice mail services; (c) value-added facsimile services; (d) Internet access services; and (e) other value-added telecommunications services as regulated by the MIC.

b. Telecoms enterprises and agencies

A telecoms enterprise that provides non facilities-based telecoms 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 telecoms 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 telecoms 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 telecoms services for the benefit of the public.

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.

A telecoms service agent has the following rights and obligations:

- to establish terminal equipment systems at locations that are used to provide telecoms services for telecoms service users as agreed in telecoms service agency contracts;
- to provide and resell telecoms 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;
- 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 telecoms services and to be inspected and supervised by such telecoms enterprise;
- to comply with local regulations pertaining to the time within which to provide telecoms services; and
- to provide telecoms 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 telecoms 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 telecommunications enterprises*

The State holds the controlling shares in telecoms enterprises that provide facilities-based telecoms 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 July 10, 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		500	2,500 within first 3 years from the date the license is

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

mobile network)			issued and 7,500 within 15 years.
Satellite telecommunications network		30	100 within first 3 years from the date license is issued.

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:

- (i) carrying out cross compensation of telecoms services in order to engage in unfair competition;
- (ii) 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;
- (iii) using information obtained from other telecoms enterprises in order to engage in unfair competition; and
- (iv) not timely providing other telecoms enterprises with technical information of essential means and commercial information necessary for them to provide telecoms 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 telecoms services they provide in order to determine the cost of telecoms 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

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.

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.

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

No.	Telecoms services	Dominant Enterprises/ Groups of Enterprises
<i>I</i>	<i>Fixed ground 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>Land 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 to 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

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

telecommunications 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 telecoms 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 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 telecoms 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 telecoms 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 telecoms 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.

b. Fees on telecommunications operation rights

A telecoms 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 telecoms network and the income generated from the telecoms services; (ii) the quantity and value of attributed telecoms resources; (iii) usage of aerial space, terrestrial space, underground space, river bed, or sea bed needed to establish a telecoms network, telecoms works, and points to provide public telecoms 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 telecoms license. Among other things, a telecoms license may be withdrawn if the telecoms enterprise commits one of the following acts:

- fails to comply with the terms of the telecoms 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 telecoms 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 telecoms 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.

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

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.

- 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 telecoms services that are on a list of services for which certification is compulsory. The Directorate of Information and Communications Technology Quality Control (“ICTQC”) 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 services	QCVN 36:2011/BTTTT
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

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

<i>Note: (1) Only standards for grounding lightning protection systems apply.</i>	

The MIC promulgated the Regulations on Management of the Quality of Postal and Telecommunications Services with Decision No. 33/2006/QD-BBCVT of 6 September 2006 (“**Decision 33**”). Decision 33 provides guidance on:

- quality declarations;
- quality reports;
- quality examinations;
- quality supervision;
- disclosure of quality information; and
- inspection and resolution of violations, claims, and appeals regarding the quality of telecommunications services.

Telecommunications 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 ICTQC. If accepted, the ICTQC 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.

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

9. Telecoms works

Telecommunications 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 telecoms 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 telecoms 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 telecommunications 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 telecommunications 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 telecommunications enterprises, which then assign them to their customers. Telecommunications 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. Therefore, 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 is drafting regulations that allow a subscriber to keep its number when it moves to another network. It is expected that the MIC will promulgate these regulations in the coming months. Telecommunications codes and numbers are allocated under Decision 53/2006/QD-BBCVT of the MIC dated 15 December 2006 on the Partition and Use of Telecommunications Codes and Numbers.

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.

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.

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

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 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.

III. Market overview

1. Service providers

Companies licensed to provide network infrastructure are: Vietnam Post and Telecommunications Group ('VNPT'); VMS - VNPT; Saigon Postel ('SPT'); Gtel Mobile; FPT Telecoms; Hanoi Telecoms; Vishipel; Viettel Group; VTC; CMC TII; and CMC Telecommunications Infrastructure.

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

Services	Number of operators	Operators
Fixed telephone services	10	VNPT, Viettel, EVN Telecom ¹¹ , SPT, FPT, VTC, Dong Duong, CMC TI, HanoiTelecom, Gtel.
Mobile communications services (2G)	07	Vinaphone, MobiFone, Viettel, Gtel Mobile, EVN Telecom, SPT, HanoiTelecom
Mobile communications services (3G)	05	Vinaphone, MobiFone, Viettel, EVN Telecom and Hanoi Telecom ¹²
Mobile virtual network operator (MVNO)	01	VTC

According to the MIC's database, by the end of 2011¹³, the market shares of the largest players in the fixed-phone and mobile phone markets were as follows:

Enterprises	Market share of fixed-phone subscribers (%)
VTC	0.05
FPT Telecoms	0.21
SPT	1.54
EVN Telecom	7.89
Viettel	22.30
VNPT	68.00

Enterprises	Market share of mobile-phone subscribers (pre-payment and post-payment) (%)
S-Fone	0.10
EVN	0.22
Gtel	3.21
VietnamMobile	8.04
MobiFone	17.90
Vinaphone	30.07

¹¹ On January 1, 2012, EVN Telecom merged into Viettel.

¹² EVN Telecom and Hanoi Telecom jointly applied for a 3G license.

¹³ 2011 is the latest year for which statistics have been compiled.

Viettel	40.45
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The market share of Internet subscribers are allocated as follows:

Broadband

Enterprises	Market share (%)
Others	0.48
Netnam	0.60
EVN Telecom	0.73
SPT	1.76
SCTV	2.08
Viettel	8.85
VNPT	63.21
FPT	22.29

3G

Enterprises	Market share (%)
EVN Telecom	0.37
Vietnamobile	0.83
Viettel	20.77
Vinaphone	35.92
MobiFone	42.11

The companies that are licensed to test Wimax are VNPT, EVN Telecom, 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, thus far, 80 enterprises have obtained licences to provide Internet services (OSP, ISP, and IXP licences).

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 (and then reduced to US\$ 7 billion in 2011). According to MIC’s statistics, by December 2011, Vietnam reached 144.2 subscribers of mobile phones per 100 persons. Meanwhile, the number of fixed phones subscribers reached a peak of approximately 19.6 subscribers per 100 persons in 2009 and then fell to 11.52 subscribers per 100 persons in 2011. The main reason for the decrease is that customers are abandoning fixed phones in preference to mobile phones. Mobile phone operators have launched various promotional 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 telecommunications 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.