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## VIETNAM ADOPTS FIRST TELECOMMUNICATIONS LAW

On November 23, 2009, Vietnam's National Assembly passed the Law on Telecommunications, which will enter into effect on July 1, 2010, replacing the Ordinance on Post and Telecommunications dated May 23, 2003. The Law on Telecommunications governs telecommunications activities relating to investment and business in the telecommunications sector. Also of note, with respect to radio frequency activities, the National Assembly adopted the Law on Radio Frequency during the same session and has a plan to approve a Law on Post governing the postal business in 2010.

### Telecommunications services

Under the Law on Telecommunications, "telecommunications services" means services for information sending, transmission, receiving, and processing by two users or a group of users who use telecommunications services, including basic service and value-added service. However, the Law on Telecommunications does not provide a definition of basic service or value-added service. It is expected that these terms will be defined in implementing regulations.

The Law on Telecommunications provides general principles regarding the permissible telecommunication services of foreign investors. According to Article 18 of the Law, the forms and conditions for investment in telecommunication services applicable to foreign investors must comply with Vietnamese laws and Vietnam's WTO commitments. However, the Law on Telecommunications does not specify the maximum percentage of capital which foreign investors may contribute to telecommunication services enterprises in Vietnam. As a result, the maximum capital percentage owned by foreign investors in telecommunication services will be based on Vietnam's WTO commitments. Foreign investors investing in telecommunication services for the first time in Vietnam must complete formalities to obtain an Investment Certificate and the Telecommunications Business Service License.

### Competition issues

In accordance with principles to which Vietnam committed in GATT Conference Documents, a new provision on competition in the telecommunication business is

set forth in Article 19 of the Law. Specifically, telecommunications enterprises are prohibited from implementing practices that restrain competition, and may not commit unfair competitive practices. In addition, any enterprise or group of enterprises in a dominant market position, as well as telecommunications enterprises controlling telecommunication facilities, shall be prohibited from carrying out the following practices:

- (1) improperly inter-mingling different telecommunication services for an unfair competitive purpose;
- (2) using its priority on telecommunications networks and essential facilities to impede market penetration, as well as limiting and creating obstacles to other telecommunication enterprises in providing telecommunications services;
- (3) using information of other telecommunication enterprises for unfair competitive purposes; and
- (4) providing other telecommunication enterprises technical information on essential facilities and related necessary trade information for providing telecommunication services in an untimely manner.

With respect to telecommunication enterprises participating in a business sector which have a combined market share in the relevant service market of 30 to 50 percent, such enterprises must notify the telecommunication administrative body prior to carrying out activities in the

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business sector. However, the law does not stipulate clearly the competencies of the Vietnam Competition Administrative Department and the telecommunications administrative body to handle unfair competition acts in the telecommunication sector.

### Domain Names

In addition, for the first time in Vietnam, the Law on Telecommunications will allow the assignment of telecommunication numbers and Internet domain names.

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Previously, ".vn" domain name assignment was prohibited in Vietnam. For assignment of a ".vn" domain name, parties had to reach the agreement for assignment in the form of a "Minutes of Successful Mediation"

and then carry out procedures to withdraw the domain name and re-register the ".vn" domain name with the Vietnam Internet Center (VNNIC, the Vietnam domain name registrar). In the future, a forthcoming decree providing implementing regulations for the Law on Telecommunications is likely to detail conditions and procedures for assignment of Internet domain names. 🏠