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Major Changes in Vietnam IT Regulations on the Horizon

According to the 2012 *White Book on Information and Communication Technology* released by the Ministry of Information and Communications (MIC), the total revenue of Vietnam's information and communication technology sector in 2011 was USD 20 billion, 22 times more than in 2000. This included sales in the electronic hardware industry of USD 11.3 billion, an increase of 101 percent over 2010, and sales in the software industry of USD 1.17 billion, which grew by 10 percent.

Despite this rapid growth, there remains a major lack of professionalism in the management of information technology services. Currently, the main legislation governing IT services is found in three documents: the Law on Information Technology, Decree No. 71/2007/ND-CP guiding the implementation of the Law on Information Technology, and Decree 63/2007/ND-CP providing administrative sanctions in the IT sector. This legislation, however, is very general and has not caught up with the rapid developments in IT services.

In order to more closely manage the sector and create a fair environment for the industry going forward, the MIC is putting the finishing touches on a new Draft Decree on IT Services.

Clearer Definition of IT Services

The picture of IT services seems to be clearer under the Draft Decree. Instead of the current legislation's classification, in which IT services include only the three basic groups of hardware services, software services, and digital content services, the Draft Decree outlines a more comprehensive list with nine distinct groups of IT services. These groups cover services related to IT consulting; hardware and electronics; software; digital content; IT training; leasing and sharing IT resources; information safety; release and distribution of IT products; and other IT services. The Draft Decree shows further progress by its removal from the list of IT-enabled services, such as online training services or remote health diagnosis and treatment services or these services are already under the management of other government bodies.

Cloud Computing Services, License Required?

Cloud computing services, under the "leasing and sharing of IT resources" group, are included for the first time as IT services under the Draft Decree. The provision of cloud computing services, as well as large-scale data center services and industrial-scale refurbishing, recycling, and renewing of hardware and electronic products, would require a license from the MIC under the Draft Decree. This may be considered a restriction on cross-border suppliers of this service since one of the conditions for granting such a license is that the service provider be established and operat-

ing in accordance with Vietnamese laws. The point of cloud computing services is to shorten (long) distances and cut costs; the requirement that service providers have a license and a Vietnamese subsidiary would reduce both of these benefits. Also, under the current law, foreign service providers are permitted to provide cross-border IT services without limitation or restriction. It is unclear if this requirement will be applicable to cross-border service providers.

Many IT Services to Register

While there is no requirement of service provision registration under the current legislation, many IT services are required to be registered under the Draft Decree. The registration will be applicable to some digital content services; distribution of software, digital content, and information security products; web search portal services; app and digital content stores; renting and selling space for online advertising; and other services.

Though the registration procedures do not seem overly complicated and do not require the approval of the authority, the registration requirement will add to the work and time commitments faced by IT service providers.

Content Providers to Benefit from the Draft Decree

Content providers in Vietnam have been complaining for years that they have been "bullied and pinched" by the telecommunications industry because the profit-sharing ratio always leans toward the latter—commonly at the rate of 70-30 or 60-40 in favor of the telecom service providers. In addition to the profit-sharing issues, the telecom service providers often unilaterally dictate such issues as the way of doing business and the time that digital content is launched.

There is currently no specific legislation governing the profit-sharing ratio between content providers and telecom service providers. The Draft Decree is the first legal document creating a framework for this issue. Under the Draft Decree, telecom service providers are not permitted to impose their subscriber development expenses, or other expenses not directly related to content services, on corporate/individual content service providers, and must disclose the structure of revenue sharing and telecommunications charges to the content providers. The sharing of revenue and profits between digital content service providers and telecom service providers must be "determined transparently, reasonably, and equally."

Outlook

The Draft Decree has been presented at several seminars to seek opinions from concerned parties, and is currently still under consideration by the MIC. Many organizations who have reviewed the Draft Decree, including current IT service providers, have expressed their dissatisfaction with its license, permit, and registration requirements, while applauding other changes.

Based on the responses of MIC representatives at these seminars, it appears the authority is inclined to keep such requirements for management purposes. If so, there would be big changes in the legal framework for IT services, which would have a significant impact on IT service providers in Vietnam. Cross-border suppliers of IT services would be most affected—international giants would no longer be able to provide services via the internet without first obtaining permits from the MIC. An international online store selling mobile applications, for example, would need to complete registration procedures or obtain a permit to sell products to Vietnamese users. 🐼