



# ICLG

The International Comparative Legal Guide to:

## **Telecoms, Media & Internet Laws & Regulations 2017**

**10th Edition**

A practical cross-border insight into telecoms, media and internet laws and regulations

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## EDITORIAL

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Welcome to the tenth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

One general chapter. This chapter provides an overview of the EU's digital single market proposals.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 27 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

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# Vietnam

Jim Dao



Tu Ngoc Trinh



Tilleke &amp; Gibbins

## 1 Overview

**1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in your jurisdiction, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3–5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.**

Telecoms is a very important sector in Vietnam and it is becoming one of the country's key economic sectors. Over the past 10 years, telecoms, internet, and information technology have witnessed high growth and remarkable development, creating new momentum for economic and social development as well as international integration.

Upon Vietnam's accession to the WTO in 2007, the country's telecoms market, including internet infrastructure, has been opened to foreign investment for the provision of telecoms/internet services and establishment of infrastructure networks.

Viettel, VNPT and Mobifone continue to be dominant companies in the telecoms market with continued growth and high profits. In 2015, Viettel earned profits of approximately USD 2 billion (an increase of 8.5% over 2014), VNPT earned profits of approximately USD 150 million (an increase of 20% over 2014), and Mobifone earned profits of approximately USD 330 million (an increase of 1.1% over 2014).

Vietnam's internet market in 2013 had an overall revenue of USD 965.45 million, and is dominated by VNPT (51.27% of market share by subscribers), Viettel (38.99% of market share by subscribers) and FPT Telecom (6.17% of market share by subscribers).

Vietnam has three main nationwide-coverage stations under state management at the central level, namely the Voice of Vietnam (VOV), Vietnam Television (VTV) and Digital Television (VTC), and 64 local radio and television stations.

Pay TV is a market with great potential. By the end of 2015, Vietnam had 31 pay TV service providers with 73 programme channels, including 40 foreign programme channels, and approximately 10 million subscribers, with a total revenue reaching VND 9,624 billion.

There are five types of pay TV services categorised by technology, i.e., cable TV (including IPTV), terrestrial TV, satellite TV, mobile TV, and internet TV, of which cable TV holds a dominant market position, accounting for 80.8% market share with 9.9 million subscribers.

Key pay TV service providers include Vietnam Cable TV (VCTV), Saigontourist Cable TV (SCTV) and Hochiminh Cable TV (HTVC). The legal framework for pay TV, film production, film distribution and film projection in Vietnam is open to foreign investment.

**1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in your jurisdiction.**

The most important legislation which applies to the telecoms, audio-visual media distribution, and internet sectors includes:

- Law on Telecommunications No. 41/2009/QH12 adopted by the National Assembly of Vietnam on 23 November 2009 ("**Law on Telecommunications**");
- Law on Radio Frequency No. 42/2009/QH12 adopted by the National Assembly of Vietnam on 23 November 2009 ("**Law on Radio Frequency**");
- Law on Information Technology No. 67/2006/QH11 adopted by the National Assembly of Vietnam on 29 June 2006 ("**IT Law**");
- Law on Press No. 29-LCT-HDNN adopted by the National Assembly of Vietnam on 28 December 1989 as amended by Law No. 12/1999/QH10 on 12 June 1999 and to be replaced by the Law on Press No. 103/2016/QH13 from 1 January 2017 ("**Law on Press**");
- Law on Cinematography No. 62/2006/QH11 adopted by the National Assembly of Vietnam on 29 June 2006 as amended by Law No. 31/2009/QH12 on 18 June 2009 ("**Law on Cinematography**");
- Decree No. 06/2016/ND-CP of the Government dated 18 January 2016 on management, provision and use of radio and television services ("**Decree 06**"); and
- Decree No. 72/2013/ND-CP of the Government dated 15 July 2013 on management, provision and use of internet services and online information ("**Decree 72**").

There are also a considerable number of decrees and circulars to implement the key legislation mentioned above.

**1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in your jurisdiction.**

The government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the telecoms, audio-visual media distribution, and internet sectors include:

- Ministry of Information and Communications (**MIC**);
- Vietnam Telecom Authority (**VNTA**) under the MIC;
- Authority of Radio Frequency Management (**ARFM**) under the MIC;

- Authority for Broadcasting and Electronic Information (ABEI) under the MIC;
- Vietnam E-Commerce and Information Technology Agency (VECITA) under the Ministry of Industry and Trade (MOIT).

#### 1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in your jurisdiction?

Telecoms and internet (internet services are considered a type of telecoms services)

There are two types of investment in telecoms, namely facilities-based services or non-facilities-based services. In the telecommunications sector, foreign investors in business cooperation contracts will have the possibility to renew current arrangements or to convert them into another form of establishment with conditions no less favourable than those they currently enjoy.

Investment in facilities-based basic telecoms services is allowed through joint ventures with licensed telecoms service providers in Vietnam. Foreign capital contribution may not exceed 49% of legal capital of the joint ventures.

For investment in non-facilities-based basic telecoms services, joint ventures are allowed without limitation on the choice of partner. Foreign capital contribution may not exceed 65% of the legal capital of the joint ventures. For virtual private network (VPN) services, foreign capital contribution may not exceed 70% of the legal capital.

Investment in facilities-based value-added telecoms services is allowed through business cooperation contracts or joint ventures with licensed telecoms service providers in Vietnam. Foreign capital contribution may not exceed 50% of the legal capital of the joint ventures.

For investment in non-facilities-based value-added telecoms services (except internet access services), business cooperation contracts or joint ventures are allowed without limitation on the choice of partner. Foreign capital contribution may not exceed 65% of the legal capital of the joint ventures.

##### Audio-visual media distribution

In respect of motion picture production, distribution, and projection services, all films must have their content censored by the Vietnam authorities.

For motion picture distribution (with certain exceptions), investment is allowed through business cooperation contracts or joint ventures with Vietnamese partners who are authorised to provide these services in Vietnam. Foreign capital contribution may not exceed 51% of the legal capital of the joint venture.

In regard to pay TV service provision, foreign investment is subject to approval in principle by the Prime Minister.

## 2 Telecoms

### General

#### 2.1 Is your jurisdiction a member of the World Trade Organisation? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?

Yes, Vietnam has been a member of the World Trade Organisation since 11 January 2007 and has made commitments under the GATS

regarding telecommunications, and has also made commitments to comply with the telecoms reference paper.

#### 2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

Under telecoms legislation, the provision of public telecoms networks and services requires a licence. There are two types of licences, namely: (i) a licence for the establishment of public telecoms network issued to enterprises with network infrastructure providing telecoms services, valid for a maximum of 15 years; and (ii) a licence for the provision of telecoms services issued to enterprises without network infrastructure providing telecoms services, valid for a maximum of 10 years.

After the maximum terms set out above, both licences can be re-applied for.

#### 2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government?

The main competition law authority is the Vietnam Competition Authority (VCA) under the MOIT. The VCA is established by the Government within the organisational system of the MOIT and has legal status, and a separate seal and account.

The main functions of the VCA are to monitor acts which may be deemed anti-competitive or which may promote unfair competition; protect the interests of businesses and consumers from antitrust behaviour; protect consumer rights; create a healthier competitive environment for the domestic manufacturing industry; and support domestic industries to prevent lawsuits related to dumping, subsidies and safeguard measures. The VCA is the general competition regulator in Vietnam and has authority to enforce anti-competition regulations across different industries, including the telecoms sector. However, the VCA would coordinate with a specialised telecoms regulator (for example, the VNTA) for opinions when dealing with anti-competitive practices in the telecoms sector.

The VNTA and the VCA could be considered as quasi-independent regulators.

#### 2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Yes, decisions of a national regulatory authority (for example, the VNTA or the VCA) can be appealed. The complainant could appeal within the organisation (i.e., first appeal to the Director of the VNTA, then appeal to the Minister of the MIC) in accordance with the Law on Complaints, or institute an administrative claim in court in accordance with the Law on Administrative Procedures.

### Licences and Authorisations

#### 2.5 What types of general and individual authorisations are used in your jurisdiction?

Individual licences are used in Vietnam for the provision of public telecoms services. As discussed under question 2.2, there are two types of public telecoms licences: (i) a licence for the establishment of public telecoms networks; and (ii) a licence for the provision of telecoms services.



## 2.6 Please summarise the main requirements of your jurisdiction's general authorisation.

The main requirements for a licence for the establishment of public telecoms networks include requirements on legal capital and commitment on investment. Specifically, depending on the type of network (e.g., terrestrial fixed network or terrestrial mobile network), network coverage (i.e., how many provinces the network covers), and whether there is a need to use the frequency spectrum, the required legal capital varies from VND 5 billion to VND 500 billion (USD 224,000 to USD 22.4 million). The investors' commitment on investment also varies from VND 15 billion (USD 673,000) for the first three years to VND 7,500 billion (USD 340 million) for 15 years.

The main requirements for a licence for the provision of telecoms services include a requirement that an enterprise that applies for a licence to provide terrestrial mobile services, if it owns more than 20% of charter capital or shares in a telecommunication enterprise, is not allowed to possess more than 20% of the charter capital or shares of other telecommunication enterprises doing business in the same market.

Other key requirements applicable to both licences discussed above include:

- Business lines: must have telecoms business lines.
- Financial conditions: financially capable of implementing the licence in accordance with business and technical plans.
- Organisational structure and personnel conditions: must be suitable for the business plan, technical plan, and the plan for ensuring the safety of telecoms infrastructure and information security.
- Business and technical conditions: must have technical and business plans.
- Telecoms infrastructure safety and information security conditions: must provide a plan for ensuring the safety of the telecoms infrastructure and information security in conformity with the business and technical plans.

## 2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

More details of different types of individual telecoms licences in Vietnam are as follows:

- Licence for establishment of public telecoms networks: valid for a maximum of 15 years.
- Licence for provision of telecoms services: valid for a maximum of 10 years.
- Licence for telecoms specialised operations:
  - Licence for the installation of undersea telecoms cable lines: valid for a maximum of 25 years.
  - Licence for the establishment of private telecoms network: valid for a maximum of 10 years.
  - Licence for trial of telecoms network and services: valid for a maximum of one year.

Under telecoms legislation, telecoms numbering or internet resources can be transferred or assigned subject to certain conditions.

The telecoms law does not expressly prohibit the transfer or assignment of telecoms licences. A transfer or assignment of a mobile network must be conducted via specific auction and bidding procedures. The transferor or assignor must return the licence, negotiate with all partners, and, most importantly, ensure the rights of users. There are also specific qualifications a transferee or assignee must meet.

## Public and Private Works

### 2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

Land ownership and use in Vietnam differs from many other jurisdictions. Generally, land is owned collectively by the people and managed by the State.

Under the telecoms law, public telecoms works are granted priority use of space, land surfaces, underground areas, riverbeds and sea floors. Locations for providing public telecoms services will be granted priority at railway stations, car parks, seaports, airports, border gates and other public places serving the needs of telecoms service users.

The master planning for the construction of traffic works, urban zones, residential zones, industrial zones, economic zones and high-tech zones must contain master planning on passive telecoms technical infrastructure to ensure uniformity and completeness during investment and construction, and must facilitate the establishment of telecoms infrastructure and provision and use of telecoms services.

The master planning on passive telecoms technical infrastructure in localities must comply with the national master plan for the development of telecoms and with local master plans on socio-economic development, and is a compulsory item of regional construction master planning, of urban construction master planning and of rural residential construction master planning.

Based on master planning on passive telecoms technical infrastructure and the master plan and plans on land use as approved by the authorities, the relevant-level people's committee is responsible for allocating land for the construction of important telecoms works related to national security or for using locations for the provision of public telecoms services within the locality. Any investor preparing an investment project for important telecoms works related to national security or using a location to provide public telecoms services must specifically determine the area of land required to be used, prepare a plan for land compensation and site clearance, and implement the project after the relevant authority has approved the project and allocated land.

## Access and Interconnection

### 2.9 How is network-to-network interconnection and access mandated?

Interconnection is a right as well as an obligation of telecoms enterprises. Under the telecoms law, telecoms enterprises have the right to interconnect their telecoms networks with the telecoms networks or services of other telecoms enterprises, and are obligated to permit other telecoms enterprises to interconnect with their own telecoms networks or services.

The key principles for interconnecting telecoms networks and services include:

- negotiations on the basis of ensuring fairness, reasonableness and compliance with the rights and interests of the participating parties;
- the effective use of telecoms resources and telecoms infrastructure;
- ensuring technical requirements on interconnection, and safety and integrity of telecoms networks; and

- ensuring the lawful rights and interests of telecoms service users and of related organisations and individuals.

## 2.10 How are interconnection or access disputes resolved?

Parties to a dispute may submit their dispute to the Vietnam Telecommunications Authority (VNTA) under the MIC for resolving their dispute in accordance with certain enumerated procedures.

The VNTA will facilitate negotiations between the relevant parties with a view to mediation. If, after the negotiation process, the parties are able to reach an agreement on the disputed content, the dispute will be settled according to their agreement. If the parties cannot reach an agreement, the VNTA will issue a decision on resolving the dispute. The parties have the right to lodge complaints or initiate claims against the VNTA resolution, but would in the meantime still need to implement the VNTA resolution.

## 2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

Telecoms enterprises holding “essential facilities” must prepare a standard-form interconnection agreement, register it with the specialised branch administrative body for telecoms, and publicly announce it.

An essential facility is understood as an important component of telecoms infrastructure wholly or largely under the monopolised possession of one or more telecoms enterprises, for which the formation of a new replacement would not be economically and technically feasible.

## 2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and if so, how?

Yes, interconnection charges are subject to price and cost regulation. Telecoms legislation requires that tariffs for telecoms interconnection be formulated on the basis of cost price and divided in a reasonable way between segments making up the network or service stages without discrimination between the different types of services.

## 2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

Yes, telecoms enterprises or groups of telecoms enterprises in a dominant market position and telecoms enterprises holding essential facilities must implement separate statistics and accounting regimes for the telecoms services in which they hold a dominant market share to fix the prime cost of such dominant market share telecoms services, and they cannot cross-subsidise telecoms services for the purpose of unfair competition.

## 2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

Local loop is considered an essential facility. The owners of existing copper local loop access infrastructure need to unbundle their facilities.

Under telecoms law, telecoms enterprises holding essential facilities need to provide interconnection at any point on the telecoms network that is feasible in terms of technical requirements. Sharing telecoms infrastructure would be carried out through a contract on the basis of ensuring the lawful rights and interests of the telecoms enterprises. If telecoms enterprises are unable to reach an agreement among themselves on the common use of essential facilities, the telecoms authorities will issue a decision on sharing telecoms infrastructure.

Cable TV is also considered a telecoms network for these purposes. Therefore, cable TV operators would be subject to the same obligations as telecoms enterprises if they own essential facilities.

## 2.15 How are existing interconnection and access regulatory conditions to be applied to next-generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any ‘regulatory holidays’ or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

Next-generation (IP-based) networks are a new technology for Vietnam at the time of writing. Vietnam law, while it encourages investment and use of modern, energy-efficient and environmentally friendly technology, is generally thought to be technology-neutral. Next-generation networks would be subject to regulation in the same way as other telecommunications services.

Under the telecoms law, there are requirements to share passive infrastructure such as ducts or poles. The telecoms authority will issue a decision on the common use of passive telecoms infrastructure in order to ensure the requirements on competition, environment and urban planning.

## Price and Consumer Regulation

### 2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

The MIC determines telecoms charges and tariffs of public-utility telecoms services and interconnection.

Telecoms enterprises in a dominant market position, prior to their issuance and application of telecoms charges for market-dominant telecoms services, must register their telecoms charges with the telecoms authority.

Telecoms enterprises can determine charges for other telecoms services outside of the above-mentioned services but must notify the telecoms authority.

Telecoms enterprises are not allowed to provide telecoms services at a rate which is much lower than average rates in the telecoms market as set out by the MIC.

Telecoms enterprises holding essential facilities are not allowed to apply telecoms service rates lower than their costs.

The MIC may intervene in determining and managing telecoms charges and tariffs when telecoms service charges increase or decrease unreasonably compared with costs, or increase or decrease abnormally compared with average rates, resulting in instability in the telecoms market, or causing harm to the legal rights and interests of telecoms service users, other telecommunications enterprises, and the State.

### 2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

The provision of electronic communication services to consumers is subject to mandatory quality control for certain types of services (for example, telephone services via terrestrial fixed telecoms networks, telephone services via terrestrial mobile telecoms networks, terrestrial fixed broadband internet access services using xDSL, among others).

In addition, the confidentiality of personal information transmitted via a public telecoms network must be protected. Telecoms enterprises may not disclose personal information about a telecoms service user (including the user's name and address, the number and location of the transmitting or receiving server, times of calls and other personal information supplied by the user when contracting with such enterprise).

There are certain exceptions to the above, such as: (i) where the telecoms service user consents to the provision of the information; (ii) the provision of information is for the purpose of calculation of tariff charges, preparation of invoices or preventing the evasion of contractual obligations; or (iii) where there is a request from a competent authority made in accordance with the law.

## Numbering

### 2.18 How are telephone numbers and network identifying codes allocated and by whom?

Telephone numbers and network identifying codes can be allocated via auction or a "beauty contest" (a competition to win the right to use telecoms numbers) for numbers with high commercial value (such as numbers that can be easily remembered) and for which the number of applicants exceeds the allocating capacity, or can be directly allocated according to a plan on the principle that the first registered applicant will be considered for the first issuance or right to use, or other methods of allocation as may be set out by law. Telephone numbers and network identifying codes are allocated by the MIC.

### 2.19 Are there any special rules which govern the use of telephone numbers?

The use of telephone numbers is regulated under the telecoms law and in detail under Circular No. 25/2015/TT-BTTTT dated 9 September 2015 on the management and use of telecoms numbering.

### 2.20 Are there any obligations requiring number portability?

Following international practices, Vietnam promulgated Decision 1178/QD-BTTTT on 23 September 2013 on number portability, as amended by Decision 846/QD-BTTTT on 23 May 2016 providing a roadmap to implement number portability which shall officially start before 31 December 2017.

## 3 Radio Spectrum

### 3.1 What authority regulates spectrum use?

The MIC is the authority regulating spectrum use.

### 3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative 'beauty parades', etc.?

Organisations and individuals that wish to use radio frequencies must obtain the relevant radio frequency use licences.

Radio frequency use licences include radio frequency and equipment use licences, frequency band use licences and frequency and satellite orbit use licences.

Licences can be issued by the following methods: (i) direct licensing; (ii) licensing through examinations to select entities eligible for the right to use a radio frequency; and (iii) licensing through an auction of the right to use a radio frequency.

Licensing through auction or examination to select entities eligible for the right to use a radio frequency will be applied to frequency bands or channels of high commercial value for which the demands for use exceed the allocation capacity indicated in the radio frequency master plan. The radio frequency master plans are approved by the Prime Minister or the Minister of the MIC. In addition, participants in auctions or examinations must be organisations eligible for telecoms network establishment licences.

### 3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

The current Law on Radio Frequency has some licensing exemptions for radio equipment. Accordingly, the following radio equipment is exempted from the radio frequency use licensing: (i) short-range radio equipment being used in short-range, limited capacity and unlikely to cause harmful interference, which is on the list of radio equipment exempt from radio frequency use licensing; and (ii) radio equipment installed onboard foreign seagoing ships or airplanes traveling through Vietnamese territory, which are exempt from licensing under international agreements or treaties to which Vietnam is a contracting party.

### 3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

The fees for granting licences depend on the type of radio frequency use licences and must be in Vietnamese dong. Under current regulations, the fees are in a range of VND 50,000 to VND 10 million (approximately USD 23 to USD 454, at the time of writing).

In addition, fees for radio frequency use are charged annually. These charges are determined by several factors, including: (i) the basis of the economic value of the radio frequency used; (ii) the purpose of use; (iii) the level of radio frequency spectrum occupancy; (iv) the service coverage; (v) the demand for and level of use of frequency channels in the frequency band; (vi) the geographic area in which the radio frequency is used; (vii) expenses for the management of radio frequencies; and (viii) the realisation of relevant state policies in each period. There are multiple types of applicable fees for radio frequency use and such fees will depend on the frequency or equipment used.

### 3.5 What happens to spectrum licences if there is a change of control of the licensee?

In most cases, there are no changes to spectrum licences if there is a change of control of the licensee.



In Vietnam, a local company will have an Enterprise Registration Certificate (ERC) for business registration, which is issued by the company registration authority (i.e., the Department of Planning and Investment). An ERC is very roughly akin to a certificate of incorporation in certain other jurisdictions.

After obtaining the ERC, to have the radio frequency, the company must obtain a sub-licence which is the radio frequency use licence. The company would need to notify the radio frequency management licensing authority of any changes to the content of the radio frequency use licence. However, the radio frequency use licences do not contain information on the founding shareholders or the equity members of the licensees. Thus, a change of control of the licensee typically would have no effect on that licence.

### 3.6 Are spectrum licences able to be assigned, traded or sub-licensed and if so, on what conditions?

Under the Law on Radio Frequency, radio frequency use licences can be assigned to other entities under specific conditions, such as:

- only organisations licensed to use a frequency band or channel through auction and also having exploited and used such bands or frequency channels for at least three years may transfer the right to use a radio frequency to other organisations;
- the licence for transfer must be a valid licence;
- organisations receiving the right to use a radio frequency must meet the conditions for participants in an auction or examination to select entities eligible for the right to use radio frequencies specified by the law;
- the transfer must be approved in writing by the MIC; and
- the parties to the transfer must fulfill tax obligations under tax laws.

Under very limited instances, leasing or lending radio frequencies may be possible.

## 4 Cyber-security, Interception, Encryption and Data Retention

### 4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

Vietnamese laws empower certain government authorities in inspections and investigations which would allow them to obtain access to private communication. The authorities in Vietnam, such as the Inspectorate of the Ministry of Information and Communications and the investigation agencies of the People's Police are empowered with wide authority to request the supply of information from organisations and individuals. In particular, the government authorities may have the power to access and examine information, equipment or systems of the relevant parties if there is a suspected violation of relevant laws and regulations.

These powers are set out in various laws and regulations, including:

- (i) Law on Information Technology No. 67/2006/QH11 adopted by the National Assembly of Vietnam on 29 June 2006 (“**IT Law**”);
- (ii) Law on Telecommunications No. 41/2009/QH12 adopted by the National Assembly of Vietnam on 23 November 2009 (“**Law on Telecommunications**”);
- (iii) Law on Inspection No. 56/2010/QH12 adopted by the National Assembly of Vietnam on 15 November 2010 (“**Inspection Law**”); and

- (iv) Law on National Security No. 32/2004/QH11 adopted by the National Assembly of Vietnam on 3 December 2004 (“**Law on National Security**”).

### 4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

There is no provision under Vietnamese laws requiring market participants to maintain call intercept capacities.

### 4.3 How does the state intercept communications for a particular individual?

With their statutorily provided powers in inspections and investigations as discussed in section 4.1 above, the inspectorate and the investigation agencies, with proper search warrants, may access systems of telecoms enterprises to intercept communications for a particular individual.

### 4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

The use of encryption products and services in the private sector is regulated under the Law on Cyber-Information Security No. 86/2015/QH 13 adopted by the National Assembly of Vietnam on 19 November 2015 (**LCIS**). The LCIS provides, among other matters, that individuals/organisations using encryption are under the obligations of:

- (i) complying with provisions as agreed with the enterprise providing encryption products regarding the use of encryption keys, transfer, repair, maintenance, cancellation or destroying of encryption products and other relevant contents;
- (ii) providing necessary information relating to encryption keys for the authorities if requested;
- (iii) coordinating with and facilitating the authorities to carry out actions to prevent criminals from stealing information or encryption and using encryption products for illegal purposes; and
- (iv) reporting to the Government Cipher Committee if they are using encryption products which are not provided by permitted enterprises, except for foreign diplomatic and consulate organisations and international organisation representative offices in Vietnam.

Under item (ii) above, the government authorities can request individuals or organisations using encryption to provide encryption keys. However, the LCIS and its guiding decree do not further clarify in which circumstances such a government request can be made.

However, under the legislation cited in section 4.1 above, especially under the Inspection Law and the Law on National Security, the authorities might be able to base their request to provide encryption keys on other legislation depending on the matter at hand.

### 4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?

Internet service providers are to retain posted and transmitted information for 15 days, and internet agents are to store posted and transmitted information for at least 30 days on their servers.

## 5 Distribution of Audio-Visual Media

### 5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

Audio-visual media distribution activities are “conditional” businesses which require organisations to be licensed to engage in these activities.

For our discussion, we classify audio-visual media into two categories: (i) radio and television broadcasting; and (ii) motion pictures.

#### (i) Radio and television broadcasting

Under Vietnam law, the provision of radio and television services can be offered as both free broadcasting services (“free TV”) and fee-based broadcasting services (“pay TV”). An organisation wishing to provide radio and television services would need to obtain a licence to operate in the broadcasting industry.

- Free TV may only broadcast Vietnamese channels (defined as radio or television channels lawfully produced or co-produced by Vietnamese news agencies licensed to operate in the broadcasting industry).
- Pay TV may broadcast both Vietnamese and foreign channels (defined as radio or television channels lawfully produced by foreign broadcasters and made in foreign languages). The number of foreign channels broadcasting on pay TV is limited to 30% of the total number of channels. A pay TV provider must register a list of programmes to be broadcasted in all of its Vietnamese and foreign channels.

A foreign channel must obtain a certificate of registration for the provision of subscription services in Vietnam. A foreign channel provider must also have a Vietnamese agent (who is authorised to provide foreign channels on pay TV) apply for such certificate and fulfil its financial obligations to the State of Vietnam. The broadcasted contents of foreign channels must comply with Vietnamese laws and need to be edited and translated by an agency that is licensed to edit foreign channels. The editing agency is responsible for the content of their translations and editing.

The conditions for operating in radio and television services are, at the time of writing, mainly governed by the Law on Media No. 29/LCT-HDNN8 passed by the National Assembly on 28 December 1989, as amended by Law No. 12/1999/QH10 on 12 June 1999 (“**1989 Law on Media**”) and its guiding legislation. The 1989 Law on Media will be replaced by a new Law on Media No. 103/2016/QH13 passed by the National Assembly on 5 April 2016 which will come into force on 1 January 2017 (“**2016 Law on Media**”).

#### (ii) Motion pictures

Motion picture distribution is regulated under the Law on Cinematography No. 62/2006/QH11 passed by the National Assembly on 29 June 2006, as amended by Law No. 31/2009/QH12 on 18 June 2009 (“**Law on Cinematography**”) and its guiding legislation.

All motion pictures produced, distributed and projected in Vietnam need to have their content censored by Vietnam’s competent authorities. Motion pictures may only be distributed (i.e., the process of circulating films in the forms of sale, rental, export and import) and disseminated (i.e., the introduction of films to the public by means of projection, broadcasting on television, or posting on the internet and other audio-visual media) when they have the proper permits granted by the relevant cinematography state management agency.

### 5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

Generally, no. Vietnamese laws do not distinguish between content broadcast via traditional distribution platforms and content delivered over the internet or other platforms for content regulation purposes.

The laws generally prohibit the provision and spreading of content which is considered to constitute “social evils”, such as, among others, content related to pornography; inciting violence, obscenity, depravity, or crime; undermining national security, social order, safety and fine traditions and customs; violating requirements of protecting children against negative impacts; defamation; IP infringement of trademarks or copyrights, and spreading viruses and harmful software.

### 5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

Please see the response to question 5.2.

### 5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Under the 1989 Law on Media, the licences are not assignable. The 2016 Law on Media is silent on this aspect. In both legal documents, there are no rules or restrictions on the change of control of the licensee.

## 6 Internet Infrastructure

### 6.1 How have the courts interpreted and applied any defences (e.g. ‘mere conduit’ or ‘common carrier’) available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

We are not aware of any court’s interpretation or application of any defences (e.g., ‘mere conduit’ or ‘common carrier’) available to protect telecommunications operators or internet service providers from liability of content carried over their networks.

Under the IT Law, in general, intermediaries or service providers for hosting, storing or transmitting content of third parties have a “safe harbour” in that they will not be liable for the content of third parties if they are just intermediaries. However, they will need to take down the content in certain instances.

### 6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

There is no provision under the laws requiring telecommunications operators or internet service providers to assist content owners whose rights may be infringed by means of file-sharing or other activities.

That said, telecommunications operators or internet service providers would need to comply with court orders or administrative decisions in, for example, the intellectual property space if such orders or decisions mandate take-down actions where intellectual property owners have successfully contended that their intellectual property rights have been infringed by, for example, a hosted website.

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**6.3 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any ‘net neutrality’ requirements?**

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Under the Law on Telecommunications, the key principles for determining telecommunications charge rates are non-discrimination in the management and stipulation of telecommunications charge rates (except where necessary to encourage new businesses to participate in the market) and ensuring a fair competition environment.

The Law on Telecommunications generally prohibits: (i) the disclosure of state secrets, military, security, economic or other confidential information specified by law; (ii) undermining national security, social order, safety and fine traditions and customs; (iii) stealthily retrieving, eavesdropping on or accessing without permission information on telecommunications networks; (iv) hacking and using without permission telecommunications resources, passwords, keywords and private information of other organisations and individuals; (v) spreading information to distort, slander or bring down the prestige of organisations or honour and dignity of individuals; (vi) advertising, propagating or trading in illegal goods or services; and (vii) illegally obstructing, disrupting or undermining the establishment of the telecommunications infrastructure or the lawful provision and use of telecommunications services.

Telecoms service agents have the right to refuse to provide telecommunications services to users who are in violation of the above.

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**6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?**

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Telecommunications operators and internet service providers may be under obligations to block access to certain sites or content if the authorities lawfully request.

The Law on Telecommunications provides that the government authorities can request telecommunications enterprises to take emergency preventive action and suspend the provision of telecommunications services in cases of riot, violence or use of telecoms services to infringe upon national security or oppose the Socialist Republic of Vietnam.

Moreover, under the IT Law, individuals or organisations transmitting or storing digital information are liable for taking necessary actions to prevent access to digital information that they themselves discover is illegal, or as may be properly requested by the authorities.

VPN services are classified as telecommunications services under Vietnam’s WTO commitments on services. Thus, they are regulated or blocked in the same way as other telecommunications services as described above.

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**6.5 How are ‘voice over IP’ services regulated?**

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Voice over IP (“VoIP”) services were previously regulated as telecoms services under Circular 05/2008/TT-BTTTT of the Ministry of Information and Communications. However, this circular was invalidated on 1 September 2013.

After that, the MIC has not yet provided any regulations governing this type of service. The MIC is working on a new draft circular governing VoIP services and other over-the-top services but it is unclear as to when this circular may be available.

### Acknowledgment

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