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The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2019

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

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Vietnam

Tu Ngoc Trinh



Tilleke & Gibbins

Waewpen Piemwichai



1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

Telecoms and internet

Vietnam's telecoms sector continues to have significant growth potential and is still one of the country's key economic sectors. However, in the first quarter of 2018, the revenue of the telecoms industry, in general, did not grow as planned. One of the reasons was likely the issuance of the new Circular No. 47/2017/TT-BTTTT, dated 29 December 2017, by the Ministry of Information and Communications ("MIC") regarding promotion rates for mobile information services. The new Circular reduced the maximum for top-up promotions for pre-paid subscribers from 50% to 20%, which caused a significant decline in voice and texting revenues.

The key players in the telecoms sector are still VNPT, Viettel, and MobiFone. In 2017, Viettel generated VND 250.8 trillion (approx. USD 11.08 billion) in revenue, and VND 44 trillion (approx. USD 1.89 billion) in profit, signifying increases of 9.4% and 12%, respectively. Revenue from the domestic telecoms market contributed 65.5% of Viettel's total revenue, while the rest came from foreign markets. (The company has operations around the globe, from Southeast Asia to as far away as Peru and Burundi.)

As for VNPT Group, their total consolidated profit in 2017 reached VND 5 trillion (approx. USD 215 million), an increase of 21% compared to the year 2016. Through the first quarter of 2018, VNPT's consolidated revenues were equivalent to the same period of 2017, while its profit increased by 5.6%.

Meanwhile, the MobiFone Corporation reported an increase of 6.3% in revenue in the first quarter of 2018. However, like other mobile operators, MobiFone's voice and texting revenues were reduced.

Audio-visual media distribution

Vietnam has three main nationwide broadcasters under state management at the central level, namely the Voice of Vietnam ("VOV") radio station, Vietnam Television ("VTV") and Digital Television ("VTC"), and 67 local radio and television stations.

For the pay TV market, a report from the Ministry of Information and Communications shows that with 14 million TV subscribers in 2017, the total revenue of the pay TV market was VND 7.5 trillion (approx. USD 324 million), a sharp decrease from the VND 12 trillion (approx. USD 518 million) in 2016, even though there were

only 12.5 million subscribers in 2016. The decrease was blamed on a price war among television channel providers, which began in 2014.

SCTV, VTVcab and K+ are still the three biggest players in the pay TV market, with high revenues and many subscribers, and great advantages in content production. However, like other television service providers, they also faced a decline in revenue. For example, in 2014, SCTV had 2.8 million subscribers and generated VND 3.6 trillion (approx. USD 155 million) in revenue. However, in 2017, though the number of SCTV's subscribers increased to 4.5 million, its revenue decreased to VND 3.42 trillion (approx. USD 148 million).

1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution 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. 103/2016/QH13 adopted by the National Assembly of Vietnam on 5 April 2016 ("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");
- Law on Cybersecurity No. 24/2018/QH14 adopted by the National Assembly of Vietnam on 12 June 2018 ("Law on Cybersecurity");
- Decree No. 25/2011/ND-CP of the Government dated 6 April 2011 on the implementation of the Law on Telecommunications, which was further amended by Decree No. 81/2016/ND-CP dated 1 July 2016, and Decree No. 49/2017/ND-CP dated 24 April 2017 ("Decree 25");
- Decree No. 06/2016/ND-CP of the Government dated 18 January 2016 on the management, provision and use of radio and television services ("Decree 06");
- Decree No. 72/2013/ND-CP of the Government dated 15 July 2013 on the management, provision and use of internet services and online information, as amended by Decree No. 27/2018/ND-CP ("Decree 72"); and

- Decree No. 174/2013/ND-CP of the Government dated 13 November 2013 on penalties for administrative violations against regulations on post and telecommunications, information technology and radio frequency, which was further amended by Decree No. 49/2017/ND-CP dated 24 April 2017 (“Decree 174”).

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, including internet; and (b) audio-visual media distribution 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: (a) telecoms, including internet; and (b) audio-visual media distribution sectors, include:

- the 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; and
- Vietnam E-Commerce and Information Technology Agency (“VECITA”) under the Ministry of Industry and Trade (“MOIT”).

1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment?

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

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 telecom services is allowed through joint ventures with licensed telecom service providers. Foreign capital contribution may not exceed 49% of legal capital of the joint ventures.

For investment in non-facilities-based basic telecom 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 telecom services is allowed through business cooperation contracts or joint ventures with licensed telecom 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 telecom 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 Vietnamese 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 respect of 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 Organization 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 telecom networks and services requires a licence. There are two types of licences, namely: (i) a licence for the establishment of a public telecom network issued to enterprises with network infrastructure providing telecom services, valid for a maximum of 15 years; and (ii) a licence for the provision of telecom services issued to enterprises without network infrastructure providing telecom 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, as well as 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 safeguarding 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.

From 1 July 2019, the body in charge of competition issues will be the National Competition Commission, a sub-unit of the Ministry of Industry and Trade formed by the consolidation of the existing Vietnam Competition Council and the VCA.

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

Legal capital and commitment to investment: 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 to 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 telecom services include:

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 telecommunications enterprise, is not allowed to possess more than 20% of the charter capital or shares of other telecommunications enterprises doing business in the same market.

Other key requirements applicable to both licences discussed above include:

- Business lines: must have telecom 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 telecom infrastructure and information security.

- Business and technical conditions: must have technical and business plans.
- Telecom infrastructure safety and information security conditions: must provide a plan for ensuring the safety of the telecom 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. Are there restrictions on the change of control of the licensee?

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

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

Under telecoms legislation, telecom 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 telecom 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 their users. There are also specific qualifications a transferee or assignee must meet.

In general, there is no express requirement on the change of control of the licensee, except the case where the licensee is listed as an enterprise in which the State is the controlling shareholder. Currently, there are five such telecom enterprises listed, which include: i) Vietnam Post and Telecommunications Group (“VNPT”); ii) Viettel Group; iii) Vietnam Maritime Communication and Electronics Company (“VISHIPEL”); iv) Global Telecommunications Corporation (“GTEL”); and v) Indochina Telecom Joint Stock Company.

This means, in general, the licensee may liberally change its control. However, the change must be compliant with the requirements on foreign ownership restriction, as briefly discussed in question 1.4 above.

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 jurisdictions. Generally, land is owned collectively by the people and managed by the State.

Under the telecoms law, public telecom works are granted priority use of space, land surfaces, underground areas, riverbeds and sea floors. Locations for providing public telecom services will be granted priority at railway stations, car parks, seaports, airports, border gates and other public places serving the needs of telecom 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 telecom technical infrastructure to ensure uniformity and completeness during investment and construction, and must facilitate the establishment of telecom infrastructure and provision and use of telecom services.

The master planning on passive telecom 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 telecom technical infrastructure 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 telecom works related to national security, or for using locations for the provision of public telecom services within the locality. Any investor preparing an investment project for important telecom works related to national security, or using a location to provide public telecom 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 wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

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

The key principles for interconnecting telecom 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 telecom resources and telecom infrastructure;
- ensuring technical requirements on interconnection, and safety and integrity of telecom networks; and
- ensuring the lawful rights and interests of telecom service users and of related organisations and individuals.

Parties to a dispute may submit their dispute to the 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.

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

Telecom 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 telecom infrastructure wholly or largely under the monopolised possession of one or more telecom enterprises, for which the formation of a new replacement would not be economically and technically feasible.

2.11 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. Telecom legislation requires that tariffs for telecom 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.

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

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

2.13 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?

High-speed broadband networks are 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 telecom authority will issue a decision on the common use of passive telecom infrastructure, in order to ensure the requirements on competition, environment and urban planning.

In terms of investment incentives, high-speed broadband networks could qualify as "high-tech activities" or "investment in development and operation, and management of infrastructure facilities"; thus, in theory, they could apply for investment incentives in the following forms: (i) a lower rate of corporate income tax for a definite period or for the whole duration of implementation of the investment project; and exemption from or reduction of corporate income tax; (ii) exemption from import duty in respect of goods imported to form fixed assets, or raw materials, supplies and components for implementation of an investment project; and (iii) exemption from or reduction of land rent, land use fees and land use tax.

Price and Consumer Regulation

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

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

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

Telecom enterprises can determine charges for other telecom services outside of the above-mentioned services, but must notify the telecom authority.

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

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

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

2.15 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) 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 telecom networks, telephone services via terrestrial mobile telecom networks, and terrestrial fixed broadband internet access services using xDSL, among others).

In addition, the confidentiality of personal information transmitted via a public telecom network must be protected. Telecom enterprises may not disclose personal information about a telecom 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 telecom 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.

Universal telecom services (i.e., public telecom services provided to all citizens in accordance with the list announced by the State) must be provided according to the conditions, with the quality and at the tariffs stipulated by the State.

Numbering

2.16 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 telecom 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.

2.17 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 telecom numbering, which was further amended by Circular No. 40/2017/TT-BTTTT dated 15 December 2017.

2.18 Are there any obligations requiring number portability?

Following international practices, Vietnam promulgated Decision No. 1178/QD-BTTTT dated 23 September 2013 on number portability, as amended by Decision No. 2447/QD-BTTTT dated 29 December 2017 providing a roadmap to implement number portability.

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 through 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 eligible organisations for telecom 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 travelling 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 licenses and must be in Vietnamese dong. Under current regulations, the fees range from VND 50,000 to VND 10 million (approx. USD 2 to USD 440, at the time of this 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 of use of 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 involved in the transfer must fulfil 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 for cybersecurity.

Vietnam’s Law on Cyber-Information Security (“LCIS”) was passed on 19 November 2015, and took effect on 1 July 2016. The LCIS is the first comprehensive law ever issued in Vietnam on the security of “cyber-information”, which is information exchanged in a telecommunications or computer network environment. Previous regulations on the subject had been scattered throughout different pieces of legislation, such as: the Law on Information Technology; the Law on Telecommunications; the Law on E-Transactions; Decree 72 on the management, provision, and use of internet services and online information; the Penal Code; and information security regulations for specific sectors such as banking and finance.

The key aspects of the LCIS include: assurances for the safety and security of cyber-information; protection of personal information in the network environment; protection of information systems and infrastructure; production, trading, and use of civil ciphers; standards and technical regulations on information security; provision of information security services; prevention of spam, computer viruses, and harmful software; and emergency responses.

A new Cybersecurity Law, separate from the LCIS, was adopted by the National Assembly on 12 June 2018, and will come into effect on 1 January 2019. The companies subject to this Cybersecurity Law are domestic and foreign companies providing services to customers in Vietnam over telecom networks or the internet, such as social networks, search engines, online advertising, online streaming/broadcasting, e-commerce websites/marketplaces, internet-based voice/text services (OTT services), cloud services, online games, and online applications.

In particular, the new Law sets out the following requirements:

- Owners of websites, portals, and social networks must not provide, post or transmit information against the Vietnamese Government or inciting/prejudicing riots, security, public order, humiliation, slander, or untruthful information.

This means websites and social network operators must not post or allow their users to post “anti-state”, “offensive” or “inciting” content on their websites/social networks, and must develop mechanisms for monitoring, verifying, and taking down prohibited content posted by their users. This requirement may diminish the website/social network operators’ “safe harbor” under other valid legislation that protects them from the responsibility to monitor or supervise digital information of their users, or investigate breaches of the law arising from the process of transmitting or storing digital information of their users.
- Domestic and foreign companies providing services over telecom networks or the internet, or value-added services in cyberspace in Vietnam must:
 - (i) authenticate users’ information upon registration;
 - (ii) keep user information confidential;
 - (iii) cooperate with Vietnamese authorities to provide information on their users when such users are investigated or deemed to have breached laws on cybersecurity;

- (iv) prevent and delete “anti-state”, “offensive” or “inciting” contents from their platforms within 24 hours of receiving a request from competent authorities;
- (v) store in Vietnam for certain periods of time (which are to be further prescribed in detail by the Government) users’ personal information, data on service users’ relationships, and data generated by service users in Vietnam (definitions and scopes of all such user-related data are not clearly provided under the law); and
- (vi) for foreign service providers in particular, establish branches or representative offices in Vietnam.

Currently, there are various issues that are unclear under the Cybersecurity Law, such as the penalties for non-compliance with these requirements, and measures for the Vietnamese authorities to enforce offshore service providers. Time will be needed for the Vietnamese Government to prepare to implement the Cybersecurity Law. The expectation is that subordinate legislation will soon be issued to clarify the details on the implementation of the Cybersecurity Law.

4.2 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;
- (ii) Law on Telecommunications No. 41/2009/QH12 adopted by the National Assembly of Vietnam on 23 November 2009;
- (iii) LCIS No. 86/2015/QH13 adopted by the National Assembly of Vietnam on 19 November 2015;
- (iv) Law on Inspection No. 56/2010/QH12 adopted by the National Assembly of Vietnam on 15 November 2010 (“**Inspection Law**”);
- (v) Law on National Security No. 32/2004/QH11 adopted by the National Assembly of Vietnam on 3 December 2004 (“**Law on National Security**”); and
- (vi) Law on Cybersecurity No. 24/2018/QH14 adopted by the National Assembly of Vietnam on 12 June 2018.

4.3 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.

4.4 How does the state intercept communications for a particular individual?

With their statutorily provided powers in inspections and investigations as discussed in question 4.2 above, the inspectorate and the investigation agencies, with proper search warrants, may access systems of telecom enterprises to intercept communications for a particular individual.

4.5 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 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 a Government request can be made.

However, under the legislation cited in question 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.

4.6 What 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 in order 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 Vietnamese 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 broadcast 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 broadcast 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 mainly governed by the Law on Press No. 103/2016/QH13 adopted by the National Assembly on 5 April 2016 (“**Law on Press**”), and Decree 06 (No. 06/2016/ND-CP of the Government dated 18 January 2016 on management provision and use of radio and television services).

(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) 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 5.1.

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

The law is silent on whether the licences are assignable. 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 for 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 only 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. to 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.

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

Under the Law on Telecommunications, the key principles for determining telecommunications charge rates are keeping the management and stipulation of telecommunications charge rates non-discriminatory (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.

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

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?

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

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 telecom 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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