



# Special Alert

September 2020

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## New Rules Combatting Spam Text Messages, Emails and Calls

On 14 August 2020, the Government promulgated Decree No. 91/2020/ND-CP on anti-spam text messages, emails and calls (“**Decree 91**”), effective as of 1 October 2020 and replacing Decree No. 90/2008/ND-CP as amended by Decree No. 77/2012/ND-CP dated 5 October 2012 (“**Decree 90**”) which has proven insufficient for effective management of spam messages in light of rapid development of advertising and marketing technologies.

Decree 91 provides a definition of advertising text messages, e-mails and calls which includes those *aimed at introducing the public to products, goods and services for profit-making purposes, or to products and services for non-profit purposes, or to the traders of the introduced products, goods or services except for news, social policies, personal information or customer care text messages from telecom enterprises*. The definition further includes the requirement that advertisers must obtain consent from users before sending advertising text messages, e-mails or making advertising calls. The consumer’s consent may be given by one of the following methods:

- (a) accepting receipt of advertising text message in a response to the first and only registration text message from an advertiser;
- (b) providing a declaration and confirmation in a printed registration form or online registration form on the portal/ website/ application/ social network of the advertiser;
- (c) registering via call or text message with telephone switchboards / customer service centers of the advertiser; or
- (d) registering to receive advertisements by using relevant support software.

Spam text messages, e-mails and calls are those sent to users without their prior consent or in violation of Decree 91, or other relevant regulations on prohibited contents. In order to facilitate users' refusal of spam, Decree 91 requires the provision of a mechanism for consumers to join or withdraw from the Do Not Call List.

Users have the right to forward spam text messages, emails and calls to the system for receiving reports on spam text messages and calls (on extension 5656) or the telecom, internet, email service provider for their handling of such spam. The Do Not Call List and the system for receiving spam reports are managed and operated by the Authority of Information Security belonging to the Ministry of Information and Communications (the "AIS"). The Do Not Call List for spam text messages and calls is published on the AIS's website. The AIS also establishes and publishes a blacklist of IP addresses / domains used for distributing spam emails, and builds and operates a technical system for management of national name identifiers which is published and accessible at <http://tendinhdanh.ais.gov.vn/> for the purpose of managing marketing messages and calls.

In order to effectively prevent advertisers from spamming services users, Decree 91 requires advertiser's to:

- (a) check the Do Not Call List and refrain from sending advertising text messages or making advertising calls to such subscribers;
- (b) provide service users with tools for searching or storing agreements on registration or refusal of receiving advertisements;
- (c) obtain and check for verification of the prior consent from service users;
- (d) have reasonable solutions, and facilitate service users in refusal of receiving advertisements in accordance with Articles 16 and 20 of Decree 91; and
- (e) cease sending advertising text messages, emails or making advertising calls to service users upon receiving refusals from them.

In addition, the sending of advertising text messages, emails or making advertising calls to service users by advertisers must comply with the following requirements:

- (a) the advertising text messages, emails and calls must comply with requirements on format and contents;
- (b) unless otherwise agreed with the consumers, each advertiser cannot send more than three advertising text messages to a phone number between 7AM and 10PM each day, three advertising emails to an email, and one advertising call to a phone number within 24 hours and between 8AM and 5PM each day;

- (c) a copy of the advertising text message is required to be sent simultaneously to the system for receiving reports on spam text messages and spam calls (on extension 5656); and
- (d) the advertisers must register and use the national name identifier for the purposes of sending advertising text messages and calls (*please note that this requirement is not applied for advertising emails*). A certificate of name identifier (“*Giấy chứng nhận tên định danh*” in Vietnamese) is granted by the AIS to the advertiser and has validity for three years from the date of grant, extendable for three year-periods.

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