

Special Alert

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Vietnam New Telecom Law 2023: Moving Forward for Digital Transformation

On 24 November 2023, the National Assembly passed the Law on Telecommunications No. 24/2023/QH15 (the “**2023 Telecom Law**”) to replace the Law on Telecommunications No. 41/2009/QH12, as amended in 2017 and 2018 (the “**2009 Telecom Law**”) which has been considered impractical and no longer suitable for the new development trend. The issuance of the 2023 Telecom Law has been voted as the most prominent ICT (Information and Communications Technology) event in 2023 by the ICT Press Club due to its far-reaching impact on the upcoming national digital transformation. This article will discuss some worth-noting new points introduced under the 2023 Telecom Law.

Telecom Licenses

As per the 2009 Telecom Law, there are two types of telecom licenses: Telecom service business license (the “**Telecom Business License**”) and telecom operation license (the “**Telecom Operation License**”), where the Telecom Business License includes: (i) a license to set up a public telecom network, and (ii) a license to provide telecom services. While the licensing conditions vary between the two types of the Telecom Business License (a license to set up public telecom network has additional requirements on legal capital and investment commitments), the licensing procedures and documentation are the same, regardless of a type of licenses, telecom network, and services, which results in the burden of administrative procedures for service providers.

In an effort to streamline administrative procedure, the 2023 Telecom Law has redefined the two types of the Telecom Business License, namely (i) a license to provide facilities-based telecom services; and (ii) a license to provide non-facilities-based telecom services. Additionally, the revision introduces three distinct licensing processes tailored to different types of telecom networks and services:

- An individual licensing shall be applied for a license to provide facilities-based telecom services (i) using radio frequency that is granted through auction, competitive examination for the right to use the radio frequency, or the regranting of the frequency band usage license; and (ii) being granted in special areas as stipulated by the Government.
- A class licensing shall be applied for (i) a license to provide facilities-based telecom services, except in cases where an individual licensing or registration/notification procedure is required; and (ii) the Telecom Operation License.
- Registration and notification procedures shall be applied for the telecom services listed in the category issued by the Government.

It is important to note that the Telecom Business License and the Telecom Operation License issued under the 2009 Telecom Law shall be used until its expiration. Particularly, for those companies that have been granted both licenses of the Telecom Business License, if the expiration date indicated on the license to provide telecom services is shorter than that on the license to set up a public telecom network, the former shall be used based on the expiration date of the latter. Additionally, applications for telecom licenses submitted before the effective date of the 2023 Telecom Law, i.e. 1 July 2024, will be considered processed under the 2009 Telecom Law.

New “Non-Traditional” Telecom Services

In order to align with the trend of developing telecom infrastructure serving digital transformation, the 2023 Telecom Law has expanded its application scope to three new “non-traditional” telecom services including:

- *Data center service:* A service that provides processing, storage, and retrieval of information for users via telecom networks by leasing a part or the entire data center. Currently, the data center industry in Vietnam is considered one of the fastest-growing in the world. As of August 2023, 27 data centers are coming from eight service providers, however, the current number of data centers in Vietnam can only meet a maximum of 30% of demand.
- *Cloud computing service:* A service that provides processing, storage, and retrieval of information for users over the telecom network through cloud computing. Interestingly, despite the slowdown in the cloud market globally, Vietnam’s cloud market is estimated to continue growing by 24.2% in 2023.
- *Basic telecom service on the Internet:* A service that primarily involves sending, transmitting, and receiving information between two individuals or a group of users of telecom services on the Internet. This definition covers the management of over-the-top telecom services (the “**OTT services**”), considering that many OTT applications such as Zalo, Viber, Telegram, etc., are increasingly widely used and are considered capable of replacing traditional telecommunications.

According to the Deputy Minister of Information and Communications, Pham Duc Long, the management of these new services is carried out with a “light-touch” approach with openness aiming to protect the rights of users, ensure safety and security information, and create favorable conditions for service development. Hence, it can be observed that in the 2023 Telecom Law, the Government encourages investment and development of non-traditional telecom services with the following general principles:

- No limitations on the ownership ratio for foreign investors;
- Service providers must conduct registration/notification instead of applying for telecom licenses for offering telecom services; and
- Service providers must also adhere to obligations related to self-disclosure of the quality of services they provide; the storage and management of service user information; and strict adherence to regulations concerning network security, cybersecurity, and personal data protection.

In addition to the mentioned requirements, service providers also have specific rights and obligations corresponding to each type of service as prescribed in the 2023 Telecom Law.

Cross-Border Provision of Telecom Services

A particular concern for overseas service providers is that, in compliance with the new rules, they must comply with the Vietnamese laws and international treaties to which Vietnam is a party, especially, provisions for (i) cybersecurity and information protection; and (ii) national defense, security, and public policy.

Significantly, Vietnamese telecom operators are required to form a technical plan addressing cybersecurity and information security concerns when engaging in commercial agreements for cross-border telecom services with overseas counterparties. However, this fact leads to an unresolved query regarding whether overseas enterprises are mandated to sign a commercial agreement with Vietnamese telecom operators, as explicitly outlined in previous drafts of the 2023 Telecom Law. Consequently, we are waiting for more specific instructions in the upcoming Government decree detailing the cross-border telecom service provisions, encompassing “non-traditional” telecom services.

Auction of the Right to Use Telecom Number Storages and Internet Resources

The auction of the right to use telecom resources has been stipulated in the 2009 Telecom Law and Decision No. 16/2021/QĐ-TTg dated 30 March 2021 of the Prime Minister along with other relevant regulations. However, due to the unique nature of telecom resources which makes it difficult to determine their value and starting price, the auction of those has not become prevalent in Vietnam.

Therefore, the 2023 Telecom Law has some notable changes to address the mentioned challenges, aiming to optimize the utilization and exploitation of telecom resources, namely:

- Identifying the types of telecom resources to be allocated through the auction which include (i) H2H mobile network codes; (ii) H2H mobile subscriber numbers; (iii) short message service (SMS) application numbers; (iv) information service solution numbers; and, (v) “.vn” websites with 1-2 characters (the “**auctioned item**”);
- Establishing rules for determining the starting price for the auctioned item; and
- If failing an auction, the auctioned item will be allocated directly to businesses and organizations having registered based on the “*first come, first served*” principle.

Apart from the aforementioned, the 2023 Telecom Law additionally expands regulations governing the provision of satellite services, and wholesale activities in telecommunications as well as tightens subscriber information management.

By absorbing the practical management of telecom services in Vietnam, and consultation with the various stakeholders during the drafting process, the 2023 Telecom Law is expected to bring strong progress in the telecom infrastructure in particular and the digital economy in general. As mentioned, the 2023 Telecom Law would take effect on 1 July 2024, except for certain regulations concerning three “non-traditional” telecom services which would take effect on 1 January 2025, allowing businesses sufficient time for transition and compliance.

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A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:



Nguyen Thi Hong Anh
Partner | Co-Head of IP & TMT
Practice Group
E anh.nguyen@indochinecounsel.com



Thai Gia Han
Associate | Co-Head of IP & TMT
Practice Group
E han.thai@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +84 28 3823 9640
F +84 28 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +84 24 3795 5261
F +84 24 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

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