

New Decree against Spam

On 14 August 2020, the Government issued Decree No. 91/2020/ND-CP on anti-spam text messages, emails and calls (“**Decree 91**”). Decree 91 will take effect from 01 October 2020 and replace Decree No. 90/2008/ND-CP against spam (“**Decree 90**”). Unlike its predecessor, Decree 91 now explicitly captures phone calls within the scope of spam. Notable changes introduced by Decree 91:

1. Introduction of Spam in the Form of Telephone Calls

Decree 91 now governs spam calls, whereas the former decree had only regulated spam in the form of emails or messages. “*Spam calls*” are now defined as advertising phone calls made without the prior consent of the recipient or in violation of the law. Its implementation will be primarily steered by the Ministry of Information and Communications (“**MIC**”), including its division, the Authority of Information Security (“**AIS**”).

In line with this introduced scope, Decree 91 now lays down the following key obligations regarding advertising calls:

- (a) All advertising calls must contain adequate information about the caller (name and address) which is provided before the advertisement contents.
- (b) If the recipient refuses to receive advertising calls, the advertiser must immediately stop calling the recipient.
- (c) Advertising calls can only be made between 8:00 AM and 5:00 PM, unless the recipient agrees otherwise.
- (d) Only 1 advertising call may be made to a phone number within a 24-hour period, unless the recipient agrees otherwise.

2. “Do-Not-Call” Registry and IP Blacklist

Decree 91 introduces a “Do-Not-Call” registry and IP blacklist developed and operated by AIS.

- (a) Do-Not-Call Registry: This is a compilation of phone numbers of persons who have registered not to accept any advertising calls or messages. Organisations and individuals that use telecommunications services will be able to register this list, and withdraw from the same.

This list will be public. As such, advertisers will have an obligation to check the list to avoid making advertising calls or sending advertising messages to those numbers.

Administrative fines of up to VND 100,000,000 may be imposed on organisations that send advertising messages or make advertising calls to numbers that are on this Do-Not-Call Registry.

- (b) IP Blacklist: This a list maintained by MIC which contains the IP addresses/domains that have been flagged as engaging in spam. It is periodically updated by MIC

The list will be public, and organisations, enterprises and individuals may use this blacklist to block spam emails.

3. Brand Name Registration on the National Brand Name Management System

Decree 91 also introduces a “National Brand Name Management System”, which is intended to be used to manage and store brand names worldwide, and is developed and operated by the Authority of Information Security (“AIS”) (under MIC). This system may be accessible at tendinhdanh.ais.gov.vn.

This system forms part of the State’s effort towards combating spammers that replicate or hold themselves out as representatives of official brands (copycats).

This system allows organisations and individuals to register the brand names that would be used for advertising via messages or calls. Advertisers may only send advertising messages or make advertising calls after they have registered their brand name.

Similar to IP registration, as brand name registration is done on a “first come first served” basis, organisations/individuals are encouraged to carry out registration as soon as possible to facilitate future marketing efforts. This may be done by post or electronically on the above website. Note that registration would require submission of, among others, documents proving usage of IP rights (e.g., trade mark registration certificate).

Brand name holders are subject to annual or ad hoc reporting to AIS, which includes matters such as revenue and growth metrics in connection with the brand name and the extent of advertising messages and calls used.

4. Consent Requirements

Decree 91 now specifies the method by which consent is to be obtained prior to sending advertising messages/emails/calls (*the previous decree generally just required prior consent*). Particularly, the recipient would need to give consent through either of the following methods:

Client Update: Vietnam

2020 September

-
- (a) for advertising messages, agreeing to receiving such messages after the advertiser sends the first and only opt-in message;
 - (b) declaring and completing a registration form on paper, website/portal, online application or social network of the advertiser;
 - (c) calling or sending a message to the advertiser's call centre to subscribe; or
 - (d) using a software program to subscribe.

Contacts



Chau Huy Quang
Managing Partner

D +84 28 3821 2382
F +84 28 3520 8206

quang.chau@rajahtannlct.com



Vu Thi Que
Partner

D +84 28 3821 2382
F +84 28 3520 8206

que.vu@rajahtannlct.com



Nguyen Dinh Nha
Partner

D +84 28 3821 2382
F +84 28 3821 2382

nha.nguyen@rajahtannlct.com



Tran Thi Phuong Thao
Partner

D +84 28 3821 2673
F +84 28 3821 2685

thao.tran@rajahtannlct.com



Logan Leung
Partner

D +84 28 3821 2382
F +84 28 3821 2685

logan.leung@rajahtannlct.com



Lim Wee Hann
Partner

D +84 28 3821 2382
F +84 28 3821 2673

wee.hann.lim@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

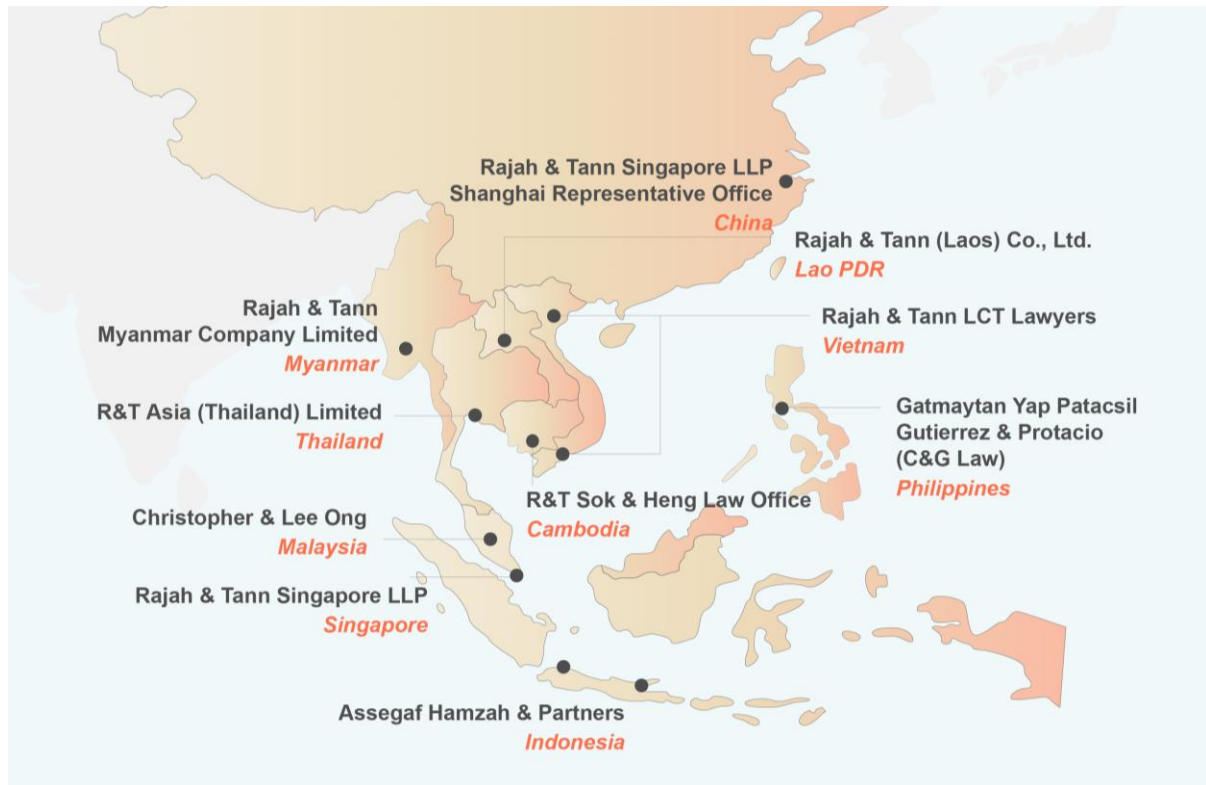
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann LCT Lawyers has a multi-faceted talent pool of lawyers with expertise in a range of practice areas who are able to provide end-to-end legal services for all transactions in Vietnam. Rajah & Tann LCT Lawyers is also able to handle cross-border transactions involving other jurisdictions, particularly those within the Indochina region.

Rajah & Tann LCT Lawyers is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann LCT Lawyers and subject to copyright protection under the laws of Vietnam and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann LCT Lawyers.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann LCT Lawyers.