

Technology, Media & Telecommunications

Law on Telecommunications 2023

Introduction

On 24 November 2023, the National Assembly approved and passed the new Law on Telecommunications No. 24/2023/QH15 ("**2023 LOT**").

The 2023 LOT replaces the existing Law on Telecommunications that was enacted in 2009. The 2023 LOT will take effect from 1 July 2024, except for certain regulations concerning the following which take effect from 1 January 2025: (i) the provision of basic telecommunications services on the internet, data centre services and cloud computing services; and (ii) payment of fees for use of network numbers.

Proposed Key Changes

We set out below a high-level summary of the proposed key changes introduced by the 2023 LOT.

Data Centres and Cloud Computing Services

The 2023 LOT introduces new regulations on **data centre services** and **cloud computing services** – services that were not previously regulated in detail.

- (a) "**Cloud computing**" is defined as a model that allows flexible use, adjustment and management according to needs of shared computing resources including networks, servers, storage devices, and applications, while a "**cloud computing service**" is a telecommunications service that provides features of processing, storing and retrieving information for users over telecoms networks through cloud computing.
- (b) A "**data centre**" is a telecommunications work consisting of buildings, station, cable system, electricity system and computer system and ancillary equipment installed therein for data processing, retention and centralised management of one or multiple organisations/individuals. "**Data Centre Services**" is a telecommunications service that provides features of processing, storing and retrieving information for users through telecoms networks by leasing a part or the entire data centre.

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The 2023 LOT imposes certain responsibilities on the domestic providers of these services, including a need to register/notify their provision of services. It also requires general compliance with telecoms infrastructure safety and network information security requirements, as well as assurance of information confidentiality obligations under law (e.g., those under the Law on Cybersecurity and Decree on Personal Data Protection).

It further requires service providers to comply with content takedown requirements – in handling content that violates copyright, intellectual property rights or legal regulations at the request of the competent authorities.

The 2023 LOT imposes no restrictions on direct foreign investments into Vietnam for the provision of data centre services and cloud computing services.

Nevertheless, the 2023 LOT does not regulate these obligations in detail. Instead, it indicates that the Government will legislate further guidance including, for example, the procedures for registration or notification by service providers.

Basic Telecommunications Service on the Internet

The 2023 LOT also introduces new regulations on over-the-top (OTT) communication services, i.e. those that are considered to be carrying out "basic telecoms services on the internet". This is a telecoms service of providing the main function of sending, transmitting, and receiving information between two or a group of telecoms service users via the internet ("**OTT Service**").

The new definition is seemingly broad, capable of capturing any service with the main function of sending, transmitting and receiving information. Accordingly, the 2023 LOT may not only regulate voice and messaging OTT services, but potentially any service that involves conveyance of online information. It remains to be seen whether the regulators will take a broad interpretation to such service.

The 2023 LOT requires domestic providers of OTT Service to, among others:

- (a) conduct the registration/notification procedures in accordance with the 2023 LOT and future legislation;
- (b) announce the quality of services provided if they own network infrastructure or have an agreement with a telecoms enterprise that has network infrastructure;
- (c) be responsible for informing the users of the need and obtain user consent before accessing information, data or features on the users' terminal equipment;
- (d) only disclose private information relating to a user if they obtain the user's consent;

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- (e) file periodic and *ad hoc* reports of its operation to the state agencies; and
- (f) have their terms of use (and other consumer-facing agreements) contain specific contents that must be included (or not included) as prescribed by the Law on Consumer Rights Protection.

Like regulations for data centre services and cloud computing services, the 2023 LOT envisages future Government regulation on discrete obligations applicable to these service providers, particularly foreign ones.

The 2023 LOT imposes no restrictions on direct foreign investments into Vietnam for the provision of these basic telecoms services on the internet.

New Telecoms Licensing Regimes

As replacement of the single telecoms licensing scheme as presently adopted in the existing telecoms law, the 2023 LOT introduces the following models of telecoms licensing that can be applied depending on the type of telecoms service provided:

- (a) **Private licensing**, which grants licences on the basis of setting forth specific conditions and obligations for the enterprises, applicable to: (i) licences for providing telecoms services with network establishment using radio frequency granted through auction and/or competition for the right to use radio frequency or re-grant of license for the use of radio frequencies; and/or (ii) licences to provide telecoms services with network infrastructure issued in areas with special requirements according to Government regulations.
- (b) **Group licensing**, which grants licences on the basis of satisfying conditions and obligations generally stipulated for organisations and/or enterprises, applicable to (i) licences for providing telecoms services with network establishment other than the cases specified in item (a) above; (ii) licences for providing telecoms services without network establishment except for the cases subject to procedures of registration/notification, and (iii) licences for telecoms professional operations.
- (c) **Registration for provision of telecoms service**, which applies to cases where an enterprise must conduct self-declaration of information about the enterprise, types of telecoms service to be provided and the fulfilment of conditions on telecoms service provision in accordance with the Government regulations.
- (d) **Notification for provision of telecoms service**, which applies to cases where an enterprise declares information about the enterprise, types of telecoms service to be provided, and information related to the quality of the service provided by the enterprise.

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It is anticipated that the Government will provide further regulations on the procedures and circumstances as to which licensing scheme applies.

Wholesale Activities in Telecoms and Competition Management

The 2023 LOT provides for a new definition of "*wholesale activities*" in telecoms, i.e., the case where a telecoms enterprise allows another telecoms enterprise to either (i) lease the former's telecoms network or (ii) purchase the former's traffic and/or telecoms services, to serve the provision of telecoms services. The 2023 LOT imposes the following additional specific responsibilities on wholesale activities:

- (a) ensure the provision of services with fair [and] reasonable prices and related conditions, without discrimination.
- (b) transparently disclose information on prices, telecommunications standards, [and] technical regulations, quality of telecommunications networks and services.

The full effect of these requirements remains to be seen as they would be subject to further guidance from the Government, but maintaining healthy competition in the market appears to be a key driver under the 2023 LOT.

In addition to the above requirements on fairness and transparency, the 2023 LOT intends for the Government to further stipulate the criteria for determining telecoms service markets managed by the State, the criteria for determining telecoms enterprises, and group of telecoms enterprises having dominant market positions with respect to telecoms service markets managed by the State.

In addition to general obligations of a telecoms enterprise, one with dominant market position must also:

- (a) conduct wholesale activities in telecoms when receiving requests from other telecoms enterprises;
- (b) carry out expense accounting, and determine costs for telecoms services provided by enterprises;
- (c) refrain from providing telecoms services at service prices lower than the costs, save for legal promotion under laws; and
- (d) develop and issue a model agreement when conducting wholesale activities in telecoms as regulated by the Minister of the Ministry of Information and Communications.

Further Information

Please feel free to reach out to our contact partners should you have queries on the above development.

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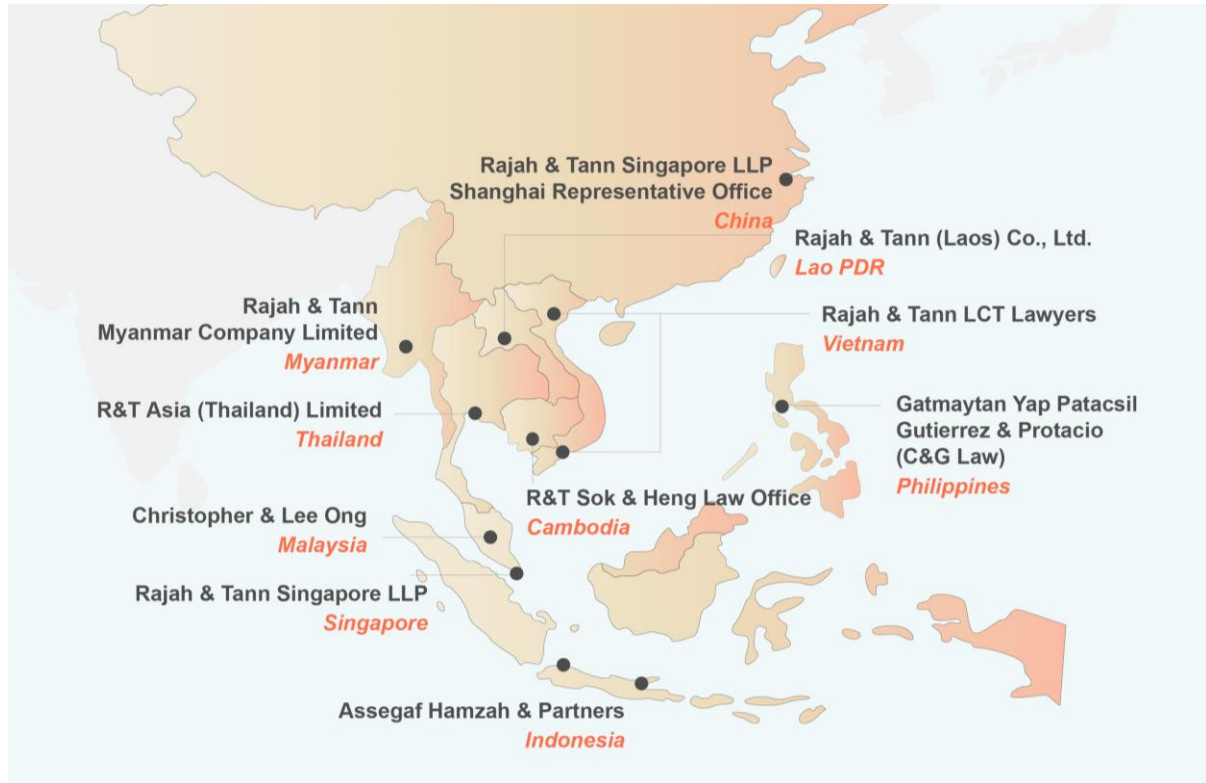
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