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# ATA GLOBAL LEGAL LIMITED COMPANY ATA LEGAL SERVICES



**LAW ON TELECOMMUNICATIONS 2023 - OFFICIALLY  
ELIMINATING ALL RESTRICTIONS WITH FOREIGNERS  
WHEN INVESTING IN THE INTERNET  
TELECOMMUNICATION SERVICES IN VIETNAM**

The Fourth Industrial Revolution and digital transformation have grown at an unprecedented speed over the past 10 years, having a great impact on the telecommunications sector. Digital telecommunications infrastructure has emerged alongside traditional infrastructure, data has become an important digital resource, and many new technologies in the field of telecommunications have been invented, creating an urgent need to have both legal and regulations to strictly manage business activities, provide telecommunications services, protect consumers, and create corridors for investment and development of Vietnam's potential telecommunications market. The revised Law on Telecommunications 2023 was born to meet this trend of Vietnam as well as the world.

Continuing the series of topics updating newly issued Laws, ATA Legal Services would like to present the topic "**LAW ON TELECOMMUNICATIONS 2023 - OFFICIALLY ELIMINATING ALL RESTRICTIONS WITH FOREIGNERS WHEN INVESTING IN THE INTERNET TELECOMMUNICATION SERVICES IN VIETNAM**"

## 1. STRENGTHEN OBLIGATIONS OF TELECOMMUNICATIONS ENTERPRISES

### 1.1. Restricting tasks in preventing and handling spam calls and messages

Spam calls and spam messages which are often abused for the purpose of sales, services offer, or even fraudulent job recruitment, multi-level scams in investment, gambling, money transfer, etc. are a nuisance for telecommunications consumers. However, the "junk" SIMs used to make these calls and messages are a huge source of revenue for telecommunications companies. This is also one of reasons why these activities have not been completely prevented.

Hence, the Law on Telecommunications 2023 has supplemented the obligations with comprehensive requirement for telecommunications companies to verify, store, and use subscriber information and to handle SIMs with incomplete or inaccurate subscriber information according to regulations of the Government.

In addition to the issue of managing subscriber information and handling "junk" SIMs, telecommunications companies also have the following obligations:

- Prevent messages and calls that violate the law according to regulations of the Government.
- Discontinue telecommunications services for subscribers who violate telecommunications regulations.

### 1.2. Integrate responsibilities in telecommunications infrastructure management according to specialized regulations

The amended Law on Telecommunications 2023 adds the following obligations for enterprises providing services with network infrastructure:

- To recall and dismantle telecommunications structures under their ownership or management that show signs of danger or do not guarantee safety for operation and use, in accordance with construction laws and regulations.
- To bury underground and adjust telecommunications cable routes according to regulations set by the Government.

These regulations are complementary to current specialized legal regulations on construction and management of underground cables.

### 1.3. Additional reporting obligations of telecommunications enterprises

In addition to the obligation to periodically or extraordinary report on their telecommunications activities as prescribed by the Minister of Information and Communications, telecommunications enterprises must also report on the use of allocated and granted telecommunications codes, numbers, and Internet resources.

Furthermore, in line with the goal of digital transformation in the administrative field and towards the building of an e-Government, the amended Law on Telecommunications 2023 requires telecommunications enterprises to have a plan in place to technically connect for reporting data by electronic means.

### 1.4. Telecommunications enterprises providing OTT services, data center services and cloud computing services must declare service quality

- Enterprises providing basic telecommunications services on the Internet (telecommunications OTT services) must announce the quality of

services they provide if they own network infrastructure or have an agreement with a telecommunications enterprise that has network infrastructure; Announce that the quality of the services they provide depends on the quality of the telecommunications network, telecommunications services are managed and provided by other telecommunications enterprises if they do not own the network infrastructure or have no agreement with the enterprise owning network infrastructure.

- Enterprises providing data center services and cloud computing services must announce the quality of the services they provide. In addition, before putting a data center into use to provide data center services or public cloud computing services, enterprises must make a declaration about the data center's compatibility with standards and technical regulations according to regulations of the Minister of Information and Communications.

### **1.5. Supplement regulations on obligations of telecommunications enterprises and groups of enterprises with dominant market positions**

According to the provisions of the Law on Competition, an enterprise is considered to have a dominant market position if it has significant market power or has a market share of 30% or more in the relevant market. In fact, Vietnam has a few telecommunications businesses with a large market share and the list of these businesses has little change over time. Therefore, strict management of these activities is extremely important to ensure healthy market development and promote market participation of new suppliers.

The amended Telecommunications Law 2023 requires the group of

telecommunications enterprises with a dominant market position to have the following obligations:

- Wholesale to other telecommunications businesses upon request;
- Perform cost accounting and determine telecommunications service prices according to regulations;
- Do not provide telecommunications services at prices lower than cost, except in the case of promotions;
- Develop a model agreement on providing wholesale services according to regulations.

### **1.6. Strictly regulate cases where telecommunications businesses can unilaterally terminate contracts with telecommunications service users**

According to the new regulations in the amended Telecommunications Law 2023, there are 3 cases where telecommunications businesses can unilaterally terminate contracts with service users:

- Service users violate the signed telecommunications service provision and use contract;
- Telecommunications subscribers violate telecommunications provisions;
- There is a written request from a competent state agency according to the provisions of law.

Including the case of a telecommunications subscriber violating the law on telecommunications is the basis for the telecommunications enterprise to unilaterally terminate the contract and at the same time agree with the regulations on the obligation to stop providing telecommunications services to the subscriber who violates the law, strengthening the basis for activities to prevent “junk” SIMs, spam calls, and text

messages from telecommunications service providers.

### **1.7. Telecommunications enterprises must carry out notification procedures or request approval before officially ceasing telecommunications service business**

The Law on Telecommunications 2009 requires that when telecommunications businesses stop providing telecommunications services, they only need to notify the specialized telecommunications management agency (Department of Telecommunications), and at the same time take measures to ensure legal rights and interests consumers and relevant parties. The revised Law on Telecommunications 2023 has stricter regulations in the direction of strengthening the responsibility of businesses as well as the State management role of competent agencies.

Accordingly, telecommunications enterprises will have to carry out procedures for notification of business cessation and are permitted to stop doing business only when they meet all conditions including:

- Have a plan to ensure the legitimate rights and interests of customers under the signed telecommunications service provision and use contract and of relevant parties;
- Notified the Ministry of Information and Communications about ceasing telecommunications service business.

For telecommunications enterprises that hold essential means, telecommunications enterprises or groups of telecommunications enterprises that have a dominant market position in the State-controlled telecommunications service market,

telecommunications service providers for public use, besides the above mentioned conditions, businesses are only allowed to stop doing business in part or all of telecommunications services directly related to essential means, telecommunications services that dominate the market, telecommunications services for public use if the following additional conditions are met and must be approved in writing by the Ministry of Information and Communications:

- In case of closing telecommunications service business without terminating operations, it is necessary to ensure that telecommunications service users are provided with alternative telecommunications services and transfer service users to Correspondence telecommunications services provider or compensate for service users by a binding agreement;
- In case of closing bness due to termination of operations, there must be measures to ensure continued provision of telecommunications services to users in the reorganization plan or plan for bankruptcy or dissolution of the enterprise.

### **1.8. Supplement and clarify the responsibilities and obligations of telecommunications businesses in the process of providing services:**

- For businesses providing basic telecommunications services
- For businesses providing data center services
- For businesses providing cloud computing services.

## 2. AMENDMENT AND SUPPLEMENT OF LICENSING REGULATIONS IN THE TELECOMMUNICATIONS FIELD

### 2.1. Adjust the name of the telecommunications license to suit the nature of the type of service business and operations

The amended Law on Telecommunications 2023 still regulates two types of telecommunications licenses: telecommunications service business license and telecommunications professional license. However, the Law removes the name License to establish a public telecommunications network in the category of telecommunications service business license. Accordingly, telecommunications service business licenses will include 2 types:

- A license to provide telecommunications services with network infrastructure with a term of not more than 15 years is granted to enterprises providing services with network infrastructure;
- A license to provide telecommunications services without network infrastructure with a term of not more than 10 years is issued to businesses providing services without network infrastructure.

As for professional licenses, an additional type is added: "License to establish a telecommunications network, with a term of not more than 10 years, issued to national radio stations and national television stations under the Government to perform their non-profit functions in informing and propagating the Party's policies, guidelines and laws."

### 2.2. Simplify telecommunications licensing procedures

The amended Law on Telecommunications 2023 has added regulations on 02 forms of telecommunications licensing including:

a. Private licensing: Is a form of telecommunications licensing based on

setting separate conditions and obligations for businesses, applicable to the following cases:

- Licenses to provide telecommunications services with network infrastructure using radio frequencies granted through auctions or competitions for the right to use radio frequencies or re-issued licenses to use radio frequencies;
- License to provide telecommunications services with network infrastructure issued in areas with special requirements according to Government regulations.

b. Group licensing: Is a form of telecommunications licensing carried out on the basis of meeting the general conditions and obligations for organizations and businesses, applicable to the following cases:

- License to provide telecommunications services with network infrastructure is not subject to a separate license;
- License to provide telecommunications services without network infrastructure, except in cases where services must be registered and notified;
- Telecommunication professional license.

In addition, the amended Telecommunications Law 2023 adds a registration and notification mechanism for telecommunications businesses when providing services in addition to the licensing mechanism. Accordingly, businesses do not need to apply for a license but only need to declare that they meet the conditions or declare information about the services they provide before officially conducting telecommunications service business.

Currently, the Law assigns the Government to promulgate a list of telecommunications services subject to registration and notification procedures. According to ATA's assessment, this regulation creates conditions and reduces administrative procedures for businesses when doing business in telecommunications services.

### **2.3. Enterprises can only participate in auctions and competitions for the right to use radio frequencies when they have fulfilled their financial obligations**

Law on Telecommunications 2023 supplementing regulations on conditions for telecommunications businesses to participate in auctions and competitions for the right to use radio frequencies or be re-issued licenses to use the frequency band. In addition to the general conditions that apply, an important condition that businesses need to meet is to complete their financial obligations regarding telecommunications before participating in the auction or competition for the right to use radio frequencies. electric line. The introduction of this condition is to determine and evaluate the commitment of businesses participating in the auction, avoiding the situation of leaving deposits and not fulfilling obligations when winning the auction.

### **2.4. Adding cases of revocation of telecommunications licenses, cases of mandatory termination of registered or notified telecommunications service**

The Law on Telecommunications 2009 has regulations on 05 cases of revocation of telecommunications licenses. However, after 12 years of implementation, this regulation shows that it is sketchy and does not meet current reality. The amended Law on Telecommunications 2023 has added the following cases of revocation of telecommunications licenses:

- Voluntary return of telecommunications service business license;
- All radio frequency resources granted under the telecommunications license will be revoked if within 12 months from the date the right to use the radio frequency is revoked without amendments, supplements or re-issuance of telecommunications operating license;
- Failure to fully pay the fee for the right to operate telecommunications after 12 months from the deadline for payment prescribed in the law on fees and charges according to the notice of the agency that issued the telecommunications license to the organization or enterprise.

In addition, to be consistent with the regulations on registration forms to provide telecommunications services, the Law also additionally stipulates cases in which enterprises providing telecommunications services in the form of registration must stop providing telecommunications services:

- Committing prohibited acts in the telecommunications sector;
- Failure to fully pay the fee for the right to operate telecommunications after 12 months from the deadline for payment prescribed in the law on fees and charges according to the notice of the agency that issued the telecommunications license to the organization or enterprise;
- Failure to meet the conditions for providing telecommunications services for services provided in the form of registration;
- Stop providing telecommunications services for 01 consecutive year without notifying the Ministry of Information and Communications.

### **3. ADDITIONAL REGULATIONS GOVERNING ISSUES IN TELECOMMUNICATION SERVICES BUSINESS**

#### **3.1. Added to the regulations of the new telecommunication services**

Newly added services include basic telecommunications services on the Internet (OTT telecommunications), data center services, and cloud computing services. The addition of these types of services to the Law on Telecommunications 2023 has many meanings in the management of service provision in the Vietnamese market, strengthening consumer protection, creating a legal corridor for businesses, attracting foreign investment in providing these services.

#### **3.2. Added to the regulations wholesale in providing telecommunication services**

For the first time, the telecommunications law has regulations on wholesale activities in the telecommunications sector. Wholesale activities in telecommunications are when a telecommunications enterprise leases a telecommunications network to another telecommunications enterprise or purchases its telecommunications traffic and services to serve the provision of telecommunications services.

The supplementary law regulates the management of wholesale activities in telecommunications according to the principle of combining general competition management laws and specialized telecommunications laws to promote wholesale market development. Wholesale activities in telecommunications comply with the following regulations:

- Ensuring the provision of services with fair, reasonable and non-discriminatory prices and related conditions;
- Transparency of information on telecommunications prices, standards,

technical regulations, network quality, and telecommunications services.

The main market share of terrestrial mobile telecommunications services in particular and the telecommunications industry in general is held by three large companies: Vietnam Military Telecommunications Group (Viettel), Vietnam Posts and Telecommunications Group (VNPT), Mobiphone Telecommunications Corporation. The characteristics of the telecommunications industry are that it requires large investments to upgrade and build infrastructure. Therefore, the advantages of established telecommunications businesses are currently very difficult for other businesses to compete with. Promoting and creating a legal corridor for wholesale activities in the telecommunications sector creates new motivation for businesses and investors to participate in Vietnam's potential telecommunications market.

#### **3.3. Supplementing regulations on controlled testing mechanisms for new technologies and new models in telecommunications activities**

The Law on Telecommunications 2023 adds the right to research, develop, and deploy testing of new technologies and new models in telecommunications activities for telecommunications businesses. In addition, the law also regulates the content of state management in the field of telecommunications including building, promulgating, and organizing the implementation of strategies, planning and policies for telecommunications development. This is to encourage research and testing of new technologies and models as well as strengthen the management and

supervision of state agencies in a fast-growing field such as telecommunications.

## **4. REGULATIONS TO FACILITATE THE DEVELOPMENT OF TELECOMMUNICATION INFRASTRUCTURE**

### **4.1. Additional regulations on telecommunications infrastructure planning**

According to previous regulations, on the basis of the national telecommunications development planning, telecommunications enterprises build their own planning and plans. Now, according to Clause 3, Article 8 of the Law on Telecommunications. When businesses build their planning and plans, they will base on:

- Information and communication infrastructure planning;
- Regional and provincial plans;
- The plans are of a technical nature and related majors.

This content not only aims at unifying the telecommunications law with specialized regulations on planning and construction, but also concretizes the goal of creating harmonious and sustainable development between regions and localities. reduce inequality between regions and regions; ensuring the best exploitation of the potential and advantages of the country, region and locality.

### **4.2. Allow telecommunications projects to be built and installed on public property**

The Law Telecommunications 2023 expands and allows telecommunications projects to be built and installed on public property including workplaces, public service establishments, land, assets of the armed forces and other property. Infrastructure assets serve national and public interests on the condition that the following principles are met:

- The design, construction, and installation of telecommunications projects must be in accordance with passive telecommunications technical infrastructure planning, comply with technical regulations on construction, telecommunications technical regulations and other provisions of law.
- Do not affect the operations of agencies, organizations or units assigned to manage and use public assets, or the utility of public assets where telecommunications projects are installed;
- Ensuring technical feasibility; landscape, environment, safety, security.

The construction and installation of telecommunications projects on public property is carried out through an agreement between the telecommunications project installation enterprise and the agency, organization, or unit assigned to manage and use public property. The money collected from the agreement to install telecommunications works on public property is managed and used according to the provisions of law on management and use of public property.

### **4.3. Additional obligations of investors constructing apartment buildings, public works, and functional areas in the installation of telecommunications infrastructure**

According to the new regulations in the Law on Telecommunications 2023, investors building apartment buildings, public works, functional areas, and industrial clusters

specified in the housing law and construction law have the following obligations:

- Have a plan to design and build passive telecommunications technical infrastructure in accordance with technical regulations to ensure consistency and synchronization in construction investment and convenience for establishing telecommunications infrastructure and providing and using telecommunications services;
- Design, install or organize the design and installation of telecommunications cable networks in apartment buildings and public works when constructing apartment buildings and public works;
- Arrange premises for installing antenna masts on building roofs, mobile transceiver systems in apartment buildings and public buildings if technically feasible;
- Arrange premises for the construction of passive telecommunications technical infrastructure, installation of telecommunications equipment in functional areas and industrial clusters.

In addition, the design, construction, management and use of passive telecommunications technical infrastructure, telecommunications cable networks, mobile transceiver systems in apartment buildings, public works, functional areas, clusters Industry must ensure the ability of at least 02 telecommunications enterprises to provide services to users.

## **5. REMOVAL OF RESTRICTIONS ON FOREIGN INVESTMENT RATE FOR INTERNET TELECOMMUNICATION SERVICES BUSINESS ACTIVITIES**

According to the provisions of Article 28 and Article 29 of the amended Law on Telecommunications 2023, investment in

Thus, the design, construction, and arrangement of premises for telecommunications infrastructure are associated with the construction of apartment buildings, functional areas, and industrial clusters. This helps promote the development of telecommunications infrastructure more effectively and thoroughly.

### **4.4. Additional cases of sharing telecommunications infrastructure**

Along with regulations allowing the construction and installation of telecommunications projects on public property, Law on Telecommunications 2023 also adds regulations that telecommunications businesses share telecommunications infrastructure between telecommunications businesses and agencies and organizations directly serving national defense and security... The sharing of telecommunications infrastructure is carried out through contracts on the basis of ensuring the legitimate rights and interests of the parties involved.

Detailing the application of telecommunications infrastructure sharing, the law also stipulates:

- In case the parties cannot agree on the price to share telecommunications infrastructure, consultation shall be carried out according to the provisions of law on prices.
- In case of disagreement on other contents about sharing telecommunications infrastructure, the competent state agency shall decide.

basic telecommunications services on the Internet, data center services, and cloud computing services is not limited to

ownership ratio, shares, capital contribution when establishing a business or the contribution ratio of foreign investors in business cooperation contracts. With this regulation, foreign investors are welcomed to enter the Vietnamese market with capital and

technology. This regulation will contribute to promoting the strong development of the telecommunications services market, helping consumers have access to better and more competitive service.

Thus, Law on Telecommunications 2023 are designed with ambition to resolve most of the current issues in recent times in the field of telecommunications, legislated and put into management a series of new services, opening the door for foreign capital to participate in the telecommunications market of Vietnam. These are the regulations that pave the way for detailed regulations to be issued later, with the goal of both creating an open corridor for investment and business activities of telecommunications enterprises, while also strictly managing telecommunications enterprises, service provision activities as well as enhancing research and application of new and progressive technologies in this field. In particular, completely opening up, without limiting the participation rate of foreign investors in the business of telecommunications services on the internet, data center services and cloud computing services is groundbreaking. However, this regulation also poses a huge challenge for state management because the telecommunications sector always has many potential security risks with the increasing appearance of various types of cross-border crime with very advanced and sophisticated tricks.

## ABOUT US

ATA Global Legal Limited Company (**ATA Legal Services**) is established and operated by acknowledged and experienced lawyers. Our operational goal is to become a law firm providing flexible and comprehensive legal services to both organizations and individuals, and both local and international clients. Of which, one of our core service is in-depth corporate consultancy.

All partners, lawyers, advisors, consultants, and even paralegals of ATA Legal Services are well-trained and have years of experience in the areas they are in charge of. In particular, the partners of ATA Legal Services have all consulted for and worked with renowned economic groups, banks or securities companies such as Vingroup, FLC, DNP, Tasco, Techcombank, SHB, SHS, VPS, etc.

With a serious and professional working attitude along with the dedication of the team always trying to put ourselves in the position of clients to understand their needs and aspirations, we are committed to bringing the most effective and appropriate services for Valued Clients.



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