

May, 2024 No.82

This issue covers the following topics:

Vietnam

New Law on Telecommunications

Ngoc Hoang

Indonesia

New Regulations for the Gaming Industry

Anastasia Jessica Maureen

Vietnam

New Law on Telecommunications

ベトナムでは新たな電気通信法が制定された。本稿では、ベトナム国外からのサービス提供も含む、データセンター、クラウドサービス、インターネットを通じた通信サービス等についてもルールを定めるこの法律について、注目すべき点を紹介する。

Background

The National Assembly of Vietnam passed the new Law on Telecommunications (“LOT 2023”) on 24 November 2023 to replace the old Law on Telecommunications dated 23 November 2009 (“LOT 2009”). LOT 2023 will come into effect as of 01 July 2024, save for certain articles on data center services, cloud computer services, basic telecommunications services on the Internet, and the payment of fees for registering and maintaining the use of network numbers that will come into effect as of 01 January 2025. Although LOT 2023 comprises many new points, in this article, we highlight the provisions related to wholesale, newly regulated services, cross-border supply, and foreign investment in the telecommunications sector.

Wholesale of telecommunications services

For the first time, the concept of wholesale of telecommunication services has been introduced in LOT 2023. It is defined to be the lease of telecommunications network to other telecommunications enterprises or the sale of telecommunications traffic and services for the purposes of services provision. The telecommunications enterprises and groups of telecommunications enterprises with a dominant market position are required to offer their network or services at wholesale to other enterprises. This requirement is expected to promote the wholesale market, create favorable conditions for new enterprises to enter the market, as well as to develop new services and applications. The Ministry of Information and Communication (“MIC”) is drafting a new circular to guide various matters in relation to wholesale activities like the obligations of fair competition and transparency, form of services provision contract and the notification thereof to MIC, and procedures of disputes settlement.

Newly regulated services

To match the trend of converting telecommunications infrastructure into digital infrastructure and, at the same time, creating a transparent legal environment for business development, after a long gestation period of more than one decade, LOT 2023 has introduced the definitions and provisions on data center services, cloud computing services, and basic telecommunications services on the Internet.

- Data center services are defined to be telecommunications services that provide information processing, storage and retrieval features for users via telecommunications networks by leasing part or all of the data center.

- Cloud computing services are defined to be telecommunications services that provide information processing, storage and retrieval features for users over telecommunications networks through cloud computing.
- Basic telecommunication services are defined to be telecommunications services that provide the main features of sending, transmitting, and receiving information between two people or a group of people using telecommunications services on the Internet (“Telco-OTT”).

The management of these services is conducted as a "light management" approach, aiming to protect the rights of users, ensure safety, security as well as to create favorable conditions for the services development. The providers of these new services are also relieved from certain obligations in comparison with the enterprises providing traditional telecommunications services. In particular, they do not have to contribute to the Vietnam Public-Utility Telecommunications Services Fund. They are not required to obtain any license or permit to provide these services but only to notify the Vietnam Telecommunications Authority (“VNTA”) under the MIC. The notification includes the information about the name of the supplier and its business certificate, the type and quality of the telecommunications services. It is expected that VNTA will then issue a confirmation to the service provider within 02 days from the date of receipt of the notice.

Cross-border supply

Article 21 of the LOT prescribes the general rules applicable to the cross-border supply of telecommunications services. Cross-border supply must satisfy the following conditions: (i) it must be permitted under the relevant national regulations and international treaties of which Vietnam is a member, (ii) it must observe the regulations to ensure national defense, security, public policy, and cybersecurity; and (iii) the local counterparty (if any) must have technical plan to ensure information security and implement emergency prevention and stop providing telecommunications services at the request of competent authorities. MIC is drafting a decree to implement LOT 2023 (“Draft Decree”) that gives detailed guidance on cross-border supply. The issuance of the implementing decree will help to address multiple pending questions on cross-border supply of telecommunications services, especially the provision of Telco-OTT, data center services, and cloud computing services. Below are the relevant contents set forth in the third version of the Draft Decree that have been available to the public so far:

- (i) In line with the commitments of Vietnam to WTO and other international treaties of which Vietnam is a member, Draft Decree provides that, cross-border supply of the telecommunications services (other than data center services, cloud computing services, and Telco-OTT services) must be provided through commercial agreements with Vietnamese telecommunications enterprises that have been licensed to provide telecommunications services and are allowed to establish international gateways.
- (ii) Cross-border supply of Telco-OTT, data center services, and cloud computing services

Although the offshore services providers do not have to assume all rights and obligations similar to that of the onshore services providers, the Draft Decree, by referring to the relevant provisions of the LOT 2023, gives them various rights and obligations. The most important rights and obligations are:

- the service providers do not have to compensate for indirect damages or unearned profits due to providing telecommunications services that do not ensure time and quality.
- the service providers are obliged to: (x) prevent and block messages and calls that violate legal regulations. At the request of competent authorities, the service providers must stop providing telecommunications services when the services are used to threaten national security; (y) verify the information about the mobile phone number of users before providing the service, store the information about the service users in accordance with the regulations on cybersecurity, and protect the state secrets and personal data of the services users; and (z) submit ordinary and extraordinary reports in accordance with the MIC’s regulations. It is expected that the MIC will issue a circular to regulate the reporting forms and regime.

Foreign investment in telecommunications

In principle, the capital contribution by foreign investors in telecommunications sector is limited by the caps stipulated in the international treaties of which Vietnam is a member.

Foreign investment in telecommunications services that are not covered by the international treaties will be regulated by national regulations. Notably, LOT 2023 does not limit the ownership ratio of foreign investors in the enterprises providing data center services, cloud computing services, and Telco-OTT services.

Below are the main caps on the ratio of charter capital contributed by foreign investors in a telecommunications enterprise:

Treaties	Non facilities-based services		Facilities-based services	
	Basic telecommunication services	Value-added services	Basic telecommunication services	Value-added services
WTO, ¹ VJEPA, ² VKFTA ³	65% (VPN services: ⁴ 70%)	65%	49%	50%
AFAS ⁵	75% (VPN services: 70%)	70%	49%	50%
EVFTA ⁶	65%, increased to 75% after 5 years from the effective date of EVFTA. (VPN services: 70%, increased to 75% after 5 years from the effective date of EVFTA)	65%, increased to 100% after 5 years from the effective date of EVFTA	49%	50%, increased to 65% after 5 years from the effective date of EVFTA
CPTPP ⁷	65% (VPN services: 70%), increased to 100% after no more than 5 years from the effective date of CPTPP	65% (VPN services: 70%), increased to 100% after no more than 5 years from the effective date of CPTPP	49%	51%, increased to 65% after no more than 5 years from the effective date of CPTPP

(Source: Synthetized from the National Portal on Investment

https://vietnaminvest.gov.vn/SitePages/News_Detail.aspx?ItemId=217)

¹ Vietnam's commitments to WTO.

² Vietnam-Japan Economic Partnership Agreement

³ Free Trade Agreement between Vietnam and Korea.

⁴ Virtual Private Network.

⁵ ASEAN Framework Agreement on Services.

⁶ EU-Vietnam Free Trade Agreement.

⁷ Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Conclusion

LOT 2023 introduces multiple new and progressive provisions, which will enhance fair competition and innovation in the Vietnam telecommunications market. It is expected that the more transparent and comprehensive provisions on foreign investment and cross-border supply in LOT 2023 will guarantee and give more opportunities for foreign investors and offshore telecommunications services providers to penetrate and expand their business in Vietnam.

[Author]



Ngoc Hoang (Nagashima Ohno & Tsunematsu Hanoi Branch)

ngoc_hoang@noandt.com

Ngoc Hoang is a Vietnamese qualified lawyer and qualified representative of intellectual properties working in the Hanoi office since April 2015. She has broad experience in corporate, intellectual properties, and commercial law. She has assisted foreign investors and foreign contractors to set up, acquire, and solve operational issues in Vietnam.

Indonesia

New Regulations for the Gaming Industry

インドネシアではゲーム産業が急速に成長しており、2025年には25億米ドルに達すると予測されています。しかしその収益の99%超を外国企業が占めている現状を踏まえ、インドネシア政府は2024年2月12日に国家ゲーミング産業の加速的発展に関する2024年大統領規則第19号を制定し、ゲーミング産業の国家発展ロードマップを策定しました。同規則は、内国資本によるゲーム産業の発展を目指すことを主眼としたものであり、インドネシア国内のユーザー向けにゲームを頒布・配信する外国事業者はインドネシア国内に法人を設けることが義務づけられるなど、外国事業者にとっては規制が強化される内容になっていることに留意する必要があります。

Based on information available in the public domain, in 2020 the revenue of gaming industry in Indonesia reached US\$ 1,740,000,000 and in 2025 the revenue is predicted to increase up to US\$ 2,500,000,000. However, 99.51% of such revenue is dominated by foreign entities and only about 0.49% of the total revenue is enjoyed by Indonesian entities. Aware of these facts, Indonesian government established a national development roadmap for gaming industry in the form of Presidential Regulation No. 19 of 2024 on the Accelerated Development of the National Gaming Industry (“**Presidential Regulation**”) which was signed into effect on 12 February 2024. The regulation reflects the government’s recognition of the gaming sector’s strategic importance in contributing to the nation’s economy, culture, and society. It seeks to foster collaboration among stakeholders, address industry challenges, increase the market share of domestic game developers, reduce reliance on foreign revenue sources, and promote growth and innovation within the national gaming industry.

National Development Roadmap for the Gaming Industry

The Presidential Regulation introduces the National Games Industry Development Acceleration Program designed to address key objectives, such as creating a globally competitive national game development sector. To achieve these goals, a National Games Industry Development Acceleration Team will be formed, consisting of representatives from various ministries or institutions and led by the Coordinating Minister for Maritime and Investment Affairs. The team also involves the Ministry of Manpower, Minister of Tourism and Creative Economy, Ministry of Finance, Ministry of Trade, Ministry of Industry, Minister of Communication and Information Technology (“**MOCIT**”), and Head of the National Research and Innovation Agency. Generally, the team is tasked with developing and implementing policies and programs to promote the growth of the nation’s gaming industry and to encourage investment by domestic and foreign investors.

Below are the main initiatives of the National Games Industry Development Acceleration Program:

1. Requirement for game publishers to have legal presence in Indonesia

Elucidation of the Presidential Regulation defines game publisher as the promoter of game and in some cases may also be the game developer (for example, Games Studio Inc., DENA Co., LTD, ZigaGame Co. Ltd, Mihoyo, etc.). The President Regulation mandates MOCIT to create a new business classification code (KBLI or *Klasifikasi Baku Lapangan Usaha Indonesia*) for game publishers to allow foreign game publishers to establish an Indonesian legal entity or a joint venture with a domestic legal entity in the form of a limited liability company. Targeted in 2024, there will be a more-detailed regulation for game publishers operating in Indonesia to either establish Indonesian legal entities or collaborate with Indonesian entities. Those without legal entity status may face blocking measures by MOCIT.

2. Support and Incentive for Talented Human Resources

The Ministry of Manpower is tasked to develop and implement policies that will simplify the permit requirements for expatriates who are highly competent in the field of game development to work in Indonesia.

3. Access to Financing and Capital

The Ministry of Finance is assigned to implement a policy aimed at providing tax incentives to local game developers and publishers. This involves the gaming industry being included in Special Economic Zones and

revising existing laws on corporate income tax facilities. While, Minister of Tourism and Creative Economy is tasked with making a funding scheme from investors in the form of matching fund and venture capital to fund national game developers and publishers. In addition to that, the Ministry is also tasked to develop a national gaming industry financing scheme for banks to allow gaming companies to obtain financing using their intellectual property assets as collateral. This includes the creation of intellectual property valuation guidelines.

4. Increasing Promotional Access for Gaming Industry domestically and internationally

The government aims to increase promotion and opening of access to the national gaming market, create an adequate and competitive technology infrastructure to support game developers. Under one such measure the Ministry of Trade is tasked to supervise the marketing synergy with existing e-commerce players in Indonesia by providing slots for game promotion and its merchandise. Another program is to synergize the inclusive payment gateway system in the distribution platform to give access to third-party payments from Indonesia (such as OVO, DANA, GoPay, LinkAja, etc).

5. Creating sufficient and competitive technological infrastructure for the development of national gaming industry

To promote the growth of the hardware industry for national games, the Minister of Industry is expected to draft legislation incorporating software aspects (games) into the calculation of local hardware components. This measure could see national games preloaded onto hardware as a means of expanding their market. The Ministry is also tasked with issuing legislation regarding local content requirements for game industry products to be circulated in Indonesia.

In tandem with the Presidential Regulation, MOCIT has enacted the first policy regarding game industry which is effective from 24 January 2024, MOCIT Regulation No. 2 of 2024 on Game Classification (“**MOCIT Regulation 2/2024**”) which renews the age classification for games and provides new requirements for game publishers. Regulation 2/2024 replaces MOCIT Regulation No. 11 of 2016 (as defined below) which is deemed no longer relevant to current market. MOCIT Regulation 2/2024 asserts the previous MOCIT Regulation No. 5 of 2020 on Private Electronic System Operator (“**Regulation 5/2020**”) which stipulates that game publishers, both local and foreign, must register themselves as a private electronic system operator (*Penyelenggara Sistem Elektronik Lingkup Privat* or *PSE Lingkup Privat*) through the Online Single Submission (OSS) system. However, different from Regulation 5/2020 under which foreign entities domiciled overseas can register for the private electronic system operator certificate and distribute the games in Indonesia, with the enactment of MOCIT Regulation 2/2024, all foreign game publishers must have Indonesian presence either by way of forming a subsidiary as foreign direct investment company or entering into joint venture arrangement with domestic game publishers.

Game Classification

After the registration, a game publisher must independently classify its games before it can advertise and promote the games in Indonesia. This self-assessment can be done either through MOCIT’s official website or any electronic systems connected to MOCIT’s website (e.g., igrs.id).

After the self-assessment, MOCIT will conduct a suitability assessment on the game’s classification. Then the game publisher can advertise and promote their game in Indonesia. The game publisher must ensure that:

- a. The MOCIT’s classification is included in the game’s description, packaging, and advertising;
- b. The game publisher must adjust the game’s packaging or advertisement based on the game’s classification;
- c. The packaging and advertising for games classified as 3 years old or above and 7 years old or above must be marked with “to be accompanied by parents” sign;
- d. The packaging and advertising for games classified as 13 years old or above and 15 years old or above must be marked with “parental guidance” sign; and
- e. If there is any update to the information required for the classification, the game publisher must re-asses the

game's classification at least once a year.

Regulation 2/2024 also strictly prohibits three types of contents which make the game unclassifiable, as follows:

- a. display of video and/or audio of pornography;
- b. the game's activity is based on mere luck or involves gambling that can use legal payment methods, foreign currency, electronic money, or intangible commodities in the form of digital assets that can be traded and exchanged into legal payment methods and provides/supports/facilitates the disbursement feature; and/or
- c. there are contents that violate other laws and regulations.

Sanction

Regulation 2/2024 imposes administrative sanction in the form of written warning, temporary suspension, or termination of access for Indonesian users to the game through MOCIT to game publishers that do not classify their games, re-asses their content's classification, fail to include the result of the MOCIT's classification in the game's description, packaging, and/or advertising. MOCIT will also block Indonesian users access to the content of unregistered game publishers.

Going forward, foreign game publishers that are active in the Indonesian market must have presence in Indonesia, whether by establishing a limited liability company as a foreign direct investment company or forming a joint venture with Indonesian legal entity and become a taxable entity under Indonesian tax regulations. As the Indonesian government is motivated to increase the domestic presence in gaming industry, there is a possibility that the government will limit the percentage of foreign shareholding in the foreign direct investment companies of gaming industry. Based on our communication with MOCIT, the new KBLI for the game industry will be effective in 2025. Until then, the existing foreign game publishers may still run their business as usual. However, we can expect mandatory changes or renewals to the currently registered private electronic system operator certificate held by foreign game publishers in Indonesia's game market.

[Author]



Anastasia Jessica Maureen

(IM & Partners in association with Nagashima Ohno & Tsunematsu)

anastasia_maureen@noandt.com

Anastasia Jessica Maureen is a dual-licensed attorney in both Indonesia and the state of New York, based in the Jakarta office (*Associate office). She graduated with Cum Laude honors from the Faculty of Law at the University of Indonesia in early 2017. After receiving the Dean's Scholarship, she pursued her LL.M degree at the University of Pennsylvania Law School. She also obtained the Wharton Business Law Certificate from the Wharton School of Business.

Before joining NO&T, she worked at one of Indonesia's prestigious law firms with a focus on project financing and M&A. Anastasia has extensive experience assisting Indonesia's state-owned enterprises and multinational companies with project finance, merger and acquisition transactions, and other general corporate matters. She has been involved in transactions across various industries, including renewable energy, construction, and TMT.

[EDITORS' PROFILES]



Nobuo Fukui (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

nobuo_fukui@noandt.com

Nobuo Fukui is a partner at Nagashima Ohno & Tsunematsu and a representative of its Singapore Office (Nagashima Ohno & Tsunematsu Singapore LLP). He has been stationed in Singapore since 2013 and providing legal services mainly to Japanese companies and its affiliates to expand their business into south-east Asian countries.

He is a graduate of the University of Tokyo (LL.B., 2001) and Duke Law School (LL.M., 2009). He was admitted to the Japan Bar in 2003 and New York State Bar in 2010. He worked as a foreign lawyer at Widyawan & Partners (Jakarta) from 2010 to 2013, focusing on Indonesian legal practice, and he has extensive legal experience in the Indonesia related transactions.



Keigo Sawayama (Nagashima Ohno & Tsunematsu Hanoi Branch Partner)

keigo_sawayama@noandt.com

Keigo Sawayama is a partner at Nagashima Ohno & Tsunematsu and a representative of its Hanoi Office (Nagashima Ohno & Tsunematsu Hanoi Branch). He has been stationed in Hanoi since 2011 and providing legal services mainly to Japanese companies and its affiliates to expand their business into Vietnam and other countries in South-East Asia.

He is a graduate of the University of Tokyo (LL.B., 2004) and Harvard Law School (LL.M., 2011). He was admitted to the Japan Bar in 2005 and New York State Bar in 2014.



Rashmi Grover (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

rashmi_grover@noandt.com

Rashmi Grover is an attorney in the Singapore Office. She is qualified in India and the UK. Her areas of practice include mergers and acquisitions, private equity and general corporate. She has extensive experience working in the Indian market and advising clients on corporate commercial and finance transactions including transactions involving mergers, acquisitions, formation of joint ventures, private equity investments, business/asset acquisition transactions, regulatory filings and debt issuances.

This newsletter is given as general information for reference purposes only and therefore does not constitute our firm's legal advice. Any opinion stated in this newsletter is a personal view of the author(s) and not our firm's official view. For any specific matter or legal issue, please do not rely on this newsletter but make sure to consult a legal adviser. We would be delighted to answer your questions, if any.

www.noandt.com

NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan

Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: info@noandt.com



Nagashima Ohno & Tsunematsu, based in Tokyo, Japan, is widely recognized as a leading law firm and one of the foremost providers of international and commercial legal services. The firm's overseas network includes locations in New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi, Jakarta* and Shanghai. The firm also maintains collaborative relationships with prominent local law firms. The approximately 600 lawyers of the firm, including about 50 experienced lawyers from various jurisdictions outside Japan, work together in customized teams to provide clients with the expertise and experience specifically required for each client matter. (*Associate office)

Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road Level 41
Singapore 049909
Tel: +65-6654-1760 (general)
Fax: +65-6654-1770 (general)
Email: info-singapore@noandt.com

Bangkok Office

(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)



34th Floor, Bhira Tower at EmQuartier
689 Sukhumvit Road, Klongton Nuea
Vadhana, Bangkok 10110, Thailand
Tel: +66-2-302-4800 (general)
Fax: +66-2-302-4899 (general)
Email: info-bangkok@noandt.com

HCMC Office

(Nagashima Ohno & Tsunematsu HCMC Branch)



Suite 1801, Saigon Tower
29 Le Duan Street, District 1
Ho Chi Minh City, Vietnam
Tel: +84-28-3521-8800 (general)
Fax: +84-28-3521-8877 (general)
Email: info-hcmc@noandt.com

Hanoi Office

(Nagashima Ohno & Tsunematsu Hanoi Branch)



Suite 10.04, CornerStone Building
16 Phan Chu Trinh, Hoan Kiem District
Ha Noi City, Vietnam
Tel: +84-24-3266-8140 (general)
Fax: +84-24-3266-8141 (general)
Email: info-hanoi@noandt.com

Jakarta Office (*Associate office)

(IM & Partners in association with

Nagashima Ohno & Tsunematsu)



Jakarta Mori Tower 14th Floor, Unit 1401
Jalan Jenderal Sudirman Kav. 40-41
Jakarta 10210, Indonesia
Tel: +62-21-25098080 (general)
Fax: +62-21-25098090 (general)
Email: info-jakarta@noandt.com

Shanghai Office

(Nagashima Ohno & Tsunematsu

Shanghai Representative Office)



21st Floor, One ICC, 999 Middle Huaihai Road
Xuhui District, Shanghai 200031, China
Tel: +86-21-2415-2000 (general)
Fax: +86-21-6403-5059 (general)
Email: info-shanghai@noandt.com

[For more details on our global practice](#)

If you would like to receive future editions of the NO&T Asia Legal Review by email directly to your Inbox, please fill out our newsletter subscription form at the following link: https://www.noandt.com/en/newsletters/nl_asia_legal_review/

Should you have any questions about this newsletter, please contact us at [<asia-legal-review@noandt.com>](mailto:asia-legal-review@noandt.com).

Please note that other information related to our firm may be also sent to the email address provided by you when subscribing to the NO&T Asia Legal Review.