

## COMMENTS ON DRAFT DECREE IMPLEMENTING THE TELECOM LAW

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No.	Article number and content	Comments/Proposed Revisions
1.	<p><b>Article 4. Ownership in telecommunication service business)</b></p> <p>4.1. Domestic and foreign organizations and individuals shall not be entitled to own more than 20% of charter capital or shares in two or more different telecommunication enterprises which do business <b>in the same telecommunication market</b> in the list of telecommunication services promulgated by the State for the purpose of healthy competitiveness.</p>	<p>It needs to explain the phrase “in the same telecommunications market” or at least to give an definition of the “telecommunications market”. Is it the “related market” as defined in the Law on Competition? If so, a reference to the Law on Competition should be inserted.</p>
2.	<p><b>Article 5. Form, conditions, and percentage of capital of foreign investor</b></p> <p>5.2 In case of investment in provision of telecommunication services without network infrastructure, foreign investors shall be entitled to form joint venture or sign business cooperation contract with Vietnamese enterprises. In case of investment in provision of telecommunication services with infrastructure network, foreign investors shall only be entitled to form joint venture or sign business cooperation contract with enterprises, <b>which already have license in Vietnam.</b></p> <p>5.4 The percentage of capital contributed by foreign investors shall be in compliance with provisions of Vietnamese law and international treaties that Vietnam is a member of. One foreign investor shall not be entitled to own more than 30% of charter capital of one telecommunication enterprise.</p>	<p>Is the enterprise in Vietnam that is a party of the joint venture must be licensed to carry out the same telecommunication service as the service that the joint venture intends to carry out? This provision needs clarify this point.</p> <p>The first and the second sentences of Article 5.4 seem confusing. We propose the following languages:</p> <p>“The <u>aggregated</u> percentage of capital contributed by <u>all</u> foreign investors <u>in a telecommunication enterprise</u> shall be in compliance with provisions of Vietnamese law and international treaties that Vietnam is a member of. One foreign investor shall not be entitled to own more than 30% of charter capital of one telecommunication enterprise.”</p> <p>The limitation of capital contribution of a</p>

		<p>foreign investor at 30% will challenge both Vietnamese and foreign party in setting up a joint venture. When the Vietnamese party's capital contribution is less than 70%, two or more foreign investors will be required. That may complicate the corporate governance.</p> <p>What happen if a foreign investor set up some affiliates in foreign countries, which in their turn cooperate with Vietnamese party to set up a joint venture? In this case, the limitation of 30% is meaningless.</p>
3.	<p><b>Article 7. Handling disputes in doing business in telecommunication services</b></p> <p>7.1 Dispute in doing business in telecommunication services is dispute that occurs during network setting up and provision of telecommunication services.</p> <p>7.2 Specialized agency in charge of telecommunication shall handle disputes in doing business in telecommunication services within 60 days since the date of receipt of request for handling dispute. In case of not handling dispute, the specialized agency in charge of telecommunication shall be responsible for response in written which clearly indicates the reason.</p> <p>7.3 Process and procedures of handling disputes:</p> <p>a) [...];</p> <p>b) [...]In case of disagreement with the decision made by Head of the specialized agency in charge of telecommunication, concerned parties shall be entitled to request Minister of Information and Communication to handle the dispute or bring the case to court for processing according to provisions of law, but still have to implement the decision that has been made.</p>	<p>A dispute in doing business in telecommunication services may relate to various matters, e.g. land use rights. In that case the dispute settlement regimes provided in Article 7.2 and 7.3 will conflict with the provisions of Land Law on settlement of dispute relating to land use rights.</p> <p>It is not clear whether a concerned parties are still entitled to bring the dispute to the court after it is settled by the Ministry of Information and Communication.</p>
4.	<p><b>Article 10. Procedures to grant telecommunication services business license</b></p> <p>10.3 License to set up telecommunication network,</p>	<p>The addresses of branches and representative</p>

	<p>license to provide telecommunication services shall include the main following information:</p> <p>a) Name of enterprise, business name of enterprise in Vietnamese and foreign language (if any); address of headquarter; address of branches and representative offices; [.....]</p>	<p>offices should not included in a license because an enterprise may have various branches, representative offices and the addresses of those branches and representative offices may be changed by the time.</p>
5.	<p><b>Article 15. Fees on telecom activity related right</b></p> <p>[...]</p> <p>15.3 The licensed telecom entity shall be responsible for paying fees on telecom activity related right based on the following rules:</p> <p>a) For enterprise, which is granted license to set up public network using radio frequency band, telecom digit storage: the first time payment shall be made at fixed rate and by percentage of telecommunication services revenue annually but not more than 1% and <b>not less than the minimum rate</b>;</p>	<p>A definition of the “minimum rate” and the name of the authority that is in charge of setting the minimum rate should be inserted.</p>
6.	<p><b>Article 17. Provision of telecommunication services</b></p> <p>17.2 The provision of telecommunication services of foreign telecom enterprise through border to telecommunication services user in the mainland of Vietnam shall be made in the form of business cooperation contract or commercial agreement with Vietnamese telecom enterprise, which is granted <b>license to provide international telecommunication services</b>.</p>	<p>What is a license to provide international telecommunication services? What are the conditions and procedures to obtain such license?</p> <p>A definition of “international telecommunication services” and an explanation of the license to provide international telecommunication services should be included in the Decree.</p>
7.	<p><b>Article 18. Resell telecommunication services</b></p>	<p>This article does not clarify: whether a reseller has the right to sell the telecommunication service under its own brand? whether a reseller can put additional value to the service before reselling it? Those matters should be included in provision on resale of telecommunication services.</p>

8.	<p><b>Article 19. Contract to provide and use telecommunication services</b></p> <p>19.2. Contract on provision and use of telecommunication services shall be expressed in the written form, <b>verbally, method of payment</b> or by other specific acts as stipulated by law.</p>	<p>The Decree should include a guidance/explanation on the kinds of contract that can be in the verbal form.</p> <p>The action of payment may form a contract but the method of payment is not a contract form. Article 401 of the Civil Code provides: “Civil contracts may be entered into orally, in writing or by specific acts”</p> <p>We propose to amend Article 19.2 as follows:</p> <p>“Contract on provision and use of telecommunication services shall be expressed in the written form, verbally, <u>act</u> <del>method</del> of payment, or by other specific acts as stipulated by law.”</p>
9.	<p><b>Article 28. Principle for promotion in telecommunication services business</b></p>	<p>The contents of Article 27.5, 6, 7, 8, and 9 are provided in the Commercial Law, Government Decree 37/2006/ND-CP dated April 4, 2006 on Promotion Activities.</p> <p>Those items may be removed from Article 27.</p>
10.	<p><b>Article 29. Management of telecommunication service rates</b></p> <p>29.3. Telecom enterprise, which leads the market, shall not publish telecommunication service rates lower than <b>unit price</b>.</p>	<p>There should be an explanation/definition of the term “unit price”</p>
11.	<p><b>Article 36. Implementation effect</b></p>	<p>This article should indicate the termination of the validity of Decree 160/2004/ND-CP.</p>