

COMMENTS ON THE IMPLEMENTING CIRCULAR OF THE COMMUNICATIONS LAW

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Article 4. Ownership in telecommunication services business

The drafting team may consider identifying specific type of ownership. In our opinion, this Article should be titled as: Restrictions of equity ownership and shareholding ratio in telecoms services businesses.

Article 5. Form, requirements and ratio of foreign investors' ownership

Article 5.1: The terms “in the form of direct and indirect investment” may be removed.

Article 5.2: As part of the phrase “*In case of investment to provide telecoms services with network infrastructure, foreign investors may only engage in joint ventures and business cooperation contracts with other licensed telecoms businesses in Vietnam*”, we recommend clarifying what the license is, for example, “license for telecoms operation”.

Article 5.3: We recommend changing the phrase “*the project performance bond shall guarantee the minimum committed level specified in Article 9 of this Decree*” by “The project shall guarantee the minimum committed level specified in Article 9 of this Decree”.

Article 5.4: We recommend amending the phrase “*the capital contribution percentage of foreign investors shall comply with the provisions of Vietnamese laws*” with “The capital contribution percentage or shareholding ratio of foreign investors in telecoms businesses shall conform to the provisions of Vietnamese laws.”

The 30% cap defined in this Article conflicts with the provision of Article 4.1 of the draft Decree.

Article 5.5: This provision is redundant since telecoms are a conditional area of investment under investment laws. As a conditional investment undertaking, the project must go through investment certification appraisal.

Article 5.6: This provision is in conflict with the investment laws. Under Decree 108/2006, all projects with foreign invested capital in network establishment and telecoms services supply shall be subject to principle approval of the Prime Minister, not the Ministry of Information and Telecom.

Article 7. Dispute resolution in telecoms services business

Article 7.2: The telecoms specialized agency does not have in itself the authority to resolve disputes.

Article 7.3: It is necessary to distinguish dispute resolving by conciliation and through arbitration, with the arbitration agency identified by law. The telecoms specialized agency is not an arbitration agency and therefore, does not have the authority to make dispute-resolving decisions. We understand that this Article of the draft Decree means to define the role of the telecoms specialized agency as holding negotiations (similar in

nature to conciliation sessions) between the parties, and issuing a meeting minutes afterwards confirming the positions of the parties.

The head of the telecoms specialized agency is not the dispute-resolving authority. Probably, there is confusions with the appeal proceedings under complaining and appealing laws. An arbitration-based system needs to be included in the draft, in addition to the court-based system to resolve disputes.

Article 36. Enforcement

It should be clearly noted whether the provisions on investment in telecommunication in Decree 121/2008/NĐ-CP become void once this Decree comes into effect.