

## Client Alert

July 2010

### Draft Decree Implementing New Telecommunications Law Restricts Foreign Investment; Industry Comments Encouraged

A draft Decree guiding implementation of the new Telecommunications Law, which came into effect on 1 July 2010, limits foreign investors to no more than 30% of the chartered capital of Vietnamese telecommunications companies, among other restrictions.

The original Vietnamese version and an unofficial (non-Baker & McKenzie) translation of this draft Decree are attached.

Specifically, Article 5.4 of the draft Decree provides that capital contribution in a telecommunications enterprise by foreign investors must comply with Vietnamese laws and regulations and/or international treaties to which Vietnam is a party. However, it also states that one foreign investor must not own more than 30% charter capital of a telecommunications enterprise. This restriction, however, goes beyond Vietnam's limitations to its telecommunications services market access commitments in its World Trade Organization ("WTO") Services Schedule, which are between 49% and 70% of the "legal capital" of a joint venture, depending on the specific kind of telecommunications services.

The Ministry of Information and Communication ("MIC") is currently seeking comments from industry on the draft, with the comment period closing August 1. In addition, the MIC, during the recent Working Group meeting of the U.S.-Vietnam ICT Dialogue in May, requested a meeting with industry to comment on the draft Decree.

Reservations made by Vietnam under its Services Schedule do not prevent Vietnam from according more favorable treatment than originally committed. The Services Schedule is, and should be treated as, a floor, not a ceiling.

For example, regardless of the 49% limitation on foreign ownership in a telecom enterprise operating facilities-based basic service, Vietnam is free to accord to foreign investors an even higher percentage of capital ownership in its domestic legislation, for this and other services.

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Input from the business community with respect to particular percentage increases/timing of phase outs for particular services would be extremely helpful and is encouraged.

Should you wish to provide comments on this and other provisions in the draft Decree, please send them to Alyssa Worsham, at [alyssa.worsham@bakermckenzie.com](mailto:alyssa.worsham@bakermckenzie.com) or Pham Thanh Mai, at [thanhmai.pham@bakermckenzie.com](mailto:thanhmai.pham@bakermckenzie.com)

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