

Client Alert

December 2010

New Draft Decree on Administrative Sanctions in Telecommunications

The Vietnam Government has issued a new draft Decree on Administrative Sanctions in the Telecommunications Sector (the “**Draft Decree**”), which sets out administrative sanctions for activities in telecommunications investment and business, public telecommunications, and telecommunications administration. The sanctions under the Draft Decree apply to both foreign and domestic individuals and organizations engaging in telecommunications activities in Vietnam.

The Draft Decree is supposed to replace current Decree No. 142/2004/ND-CP dated 8 July 2004 on Administrative Sanctions on Post, Telecommunications and Radio Frequency Spectrum (“**Decree No. 142**”).

1. New administrative remedies

While the Draft Decree retains some of the same penalties described under Decree No. 142, it also provides for new remedies, such as:

- (i) restitution;
- (ii) compensation for damages caused by infringement; and
- (iii) option to terminate use of service.

2. New infringements subject to administrative sanctions

As the Draft Decree is focused solely on the telecommunications sector (as opposed to Decree No.142), the Draft Decree also provides further specific sanctions in the telecommunications field and divides them accordingly:

- Infringements in telecommunications business (e.g., infringements by telecommunications service agents, infringements by foreign investors, infringements in competition, etc.);
- Infringements in public telecommunications (e.g., infringements of provisions on public telecommunications, infringements on the application of public telecommunications policy, etc.);
- Infringements in establishing telecommunications networks and providing telecommunications services (e.g., infringements regarding refusal to provide telecommunications services, infringements in professional communication, etc.);

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- Infringements in issuance of telecommunications licenses (e.g., infringements of telecommunications licenses, infringements of rights regarding telecommunications operation fees, etc.);
- Infringements in interconnection and in sharing telecommunications infrastructure (e.g., infringements of public telecommunications networks, etc.);
- Infringements in telecommunications resources (e.g., infringements in allocation, use and return of telecommunications and Internet resources, etc.);
- Infringements in management of service fees, quality and promotions (e.g., infringements of network quality and telecommunications service, infringements of promotions, etc.);
- Infringements in telecommunications works (e.g., infringements of design, construction and use of telecommunications works, etc.);
- Infringements in the safety of infrastructure and information security (e.g., infringements regarding disclosure of private information, infringements regarding transmission of information on telecommunications networks, etc.); and
- Infringements in disputes and claims, and report mechanisms (e.g., infringements in dispute resolution and infringements regarding report mechanisms, etc.).

3. Increase in the monetary fine

Monetary fines have been increased dramatically under the Draft Decree.

For example, infringements such as disclosure of a client's personal information or unilateral termination of service provision without prior notification are subject to fines of up to VND 70 million (approx. US\$3,500).

The Draft Decree strictly prohibits tampering with mobile phone cards, providing fines ranging from VND 30 million (approx. US\$1,500) to VND 50 million (approx. US\$2,500).

Fine levels for service-provision refusal have also been enhanced. For example, service providers that unilaterally terminate a contract or refuse to provide a contract without legal reason are subject to fines ranging from VND 20 million (approx. US\$1000) to VND 30 million (approx. US\$1,500).

2. Change in authority to impose penalty

Decree No. 142 currently vests the power to impose fines for administrative sanctions in telecommunications only in the Chief Inspector of the Ministry of Information and Communications ("MIC") or of the MIC's Provincial Department.

The Draft Decree, however, assigns various powers to impose fines to telecommunications inspectors, People's Committees, border military, sea police, customs authorities, tax authorities, and market administration authorities. The MIC's Chief Telecommunications Inspector, however, has the sole power to issue the highest monetary penalty of VND 70 million (approx. US\$3,500).

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