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Draft Decree amending Decree No. 06/2016/ND-CP: Opportunities for offshore OTT TV, on-demand and PayTV service providers providing services to users in Vietnam

I. Background

On 2 October 2020, the Ministry of Information and Communications (“**MIC**”) released the Ninth Version of the Draft Decree amending Decree No. 06/2016/ND-CP (“**Decree No. 06**”) on Management, Provision and Utilization of Radio and Television Services (“**Draft Decree**”). Compared to the previous version, this version is much more flexible in regulating offshore entities providing services to end-users in Vietnam on a cross-border basis. The Draft Decree is written broadly enough to cover new services that are not yet considered under the WTO framework. This demonstrates the efforts of the MIC to attend to the business opportunities for offshore service providers while ensuring their compliance with Vietnamese laws, creating a fair competition for both onshore and offshore service providers.

To start with, the Draft Decree amends 15 out of 32 Articles under Decree No. 06, but apart from these amendments to services and content regulations, the Draft Decree also reduces the period of time allocated to relevant authorities to assess entities’ applications and other dossiers. Please see below for our detailed analysis of the notable and innovative changes under the Draft Decree.

II. Key Changes Under The Draft Decree

1. *Notable amended/supplemented definitions and certain requirements associated to them*

(a) Domestic and foreign programs

The Draft Decree supplements the definitions for domestic programs and foreign programs. Domestic programs refer to radio and television broadcasts, as well as other image and sound programs produced by Vietnamese entities, including live broadcasts at the time the event takes place. Foreign programs are defined similarly, except that they are produced by foreign entities instead of by local Vietnamese entities.

(b) Radio and television services, on-demand radio and television content, and radio and television services provided on the Internet (“OTT TV”)

OTT TV is defined under the Draft Decree as:

“a type of radio and television services using Internet connection via domain names of portals or identified Internet addresses, including Internet applications”

On the same note, the Draft Decree defines radio and television services to include the provision of on-demand radio and television content, which is broadly defined under this Draft Decree to include films.

Compared to the current Decree No. 06, these definitions are broader in the sense that OTT services are not required to provide a particular type of channel (i.e., radio and television program channel content as under Decree No. 06). This means that corporate entities providing only films on the Internet would still be considered radio and television services and would still be subject to requirements already imposed on those services (i.e., advertising restriction).

That said, if the Draft Decree is passed as is, OTT TV service providers would only need to inform the MIC of certain information before providing services to users in Vietnam on a cross-border basis instead of registering with the MIC as set out under the previous versions. Such information includes, but is not limited to, the technical scope and conditions to provide the services, payment methods, tentative content categorization to be provided, and the “.vn” domain name or identifiable Internet address and applications to provide the services. By not restricting the requirements to only service providers with “.vn” domain names, the Draft Decree aims to put offshore OTT TV service providers within its jurisdiction.

(c) Content Providers

The Draft Decree also clarifies the definition of content providers to exclusively refer to organizations and entities having legitimate copyright or copyright agreements with respect to the content provided to the radio and television service providers. This is to exclude the content developed and/or uploaded by individuals or other organizations from this Draft Decree's scope of application, as it should be regulated under a different set of laws (i.e., Decree No. 72/2013). These changes are highly important in avoiding overlaps when implementing the regulations.

2. Easing the requirement to edit and translate contents

Previous versions of the Draft Decree have imposed some stringent requirements on offshore entities. For examples, offshore entities would have been required to have at least 30% of the programs provided being domestic programs, or to translate all foreign programs and have such translation verified by relevant authorities. However, under this version, the MIC has removed all of these red-tape

requirements that restrict the business of offshore entities. In particular, the Draft Decree does not set out any cap for domestic programs. In addition, the Draft Decree only requires entities to translate foreign programs based on the market's demand and ensure compliance with Vietnamese laws without having the translation registered or verified.

With respect to content edition, the Draft Decree allows service providers to actively edit their contents to make sure they are in compliance with the laws on journalism, cinema, advertising and other relevant laws. Compliance with the laws on cinema is supplemented due to the addition of films into the definition of on-demand radio and television content. Further, the Draft Decree requires services providers to place content warnings in accordance with Vietnamese laws on child protection, cinema and other relevant regulations.

3. Strengthening post-check mechanism

Given the flexible content requirement, the Draft Decree emphasizes that the MIC will conduct a post-check on the content edition and translations and will impose appropriate penalties to any violations. In particular, the authority will send a written request to the entities which provide infringing content twice in 12 months, requiring them to suspend the provision of services. Depending on the levels of violation, the suspension will last no longer than 90 days, during which the infringing content providers will have to attend to the authority's request and take down and/or replace the infringing content.

The Draft Decree also introduces a new provision which requires telecommunication companies and digital platform providers to cooperate with the competent authorities to prevent such content violation upon request. This could mean that if the infringing content providers do not take action to stop such violation, the competent authorities may block access to such content.

The MIC is receiving feedback to the Draft Decree until 2 December 2020. Please do not hesitate to contact us if you need any assistance in communicating with the MIC towards that end.

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