

## Vietnam: Exploring the Legal Landscape of Data Center Services

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### 1. Modern Advancements in Digital Data Legislation in Vietnam

Digital data (“data”) is a key pillar of Vietnam’s strategy for increasing intellectual competence and value in the rapidly-evolving digital age, which is driven by artificial intelligence (AI), cloud computing, and other cutting-edge technologies. As a result, all key stakeholders, particularly regulators and businesses, seek secure, reliable, efficient, and scalable storage solutions for this valuable resource, as part of digital transformation (DX), the digital economy, and business growth.

Vietnam has taken steps to increase its pace in the DX race at the national level. In late 2023, the government of Vietnam approved a plan for construction of three national data centers (“DC”) in Vietnam. The first is located in Hoa Lac Hi-tech Park in Hanoi City, and has an expected area of 150,000 square meters (including one sub-center with a capacity of 300 rack cabinets and another with a capacity of 1,000 racks), and is to be put into operation by the end of 2025; the specific locations of the second and third centers are yet to be determined (candidate sites include Hoa Binh province, Lam Dong province, Ho Chi Minh City, and Can Tho City).<sup>1</sup>

In parallel with aggressive progress toward construction of national DCs, the top leadership of Vietnam recently outlined key objectives to promote DC investment and construction by the private sector, particularly by domestic enterprises, and to attract offshore businesses to place DCs in Vietnam through appropriate incentives; these measures will require prompt nationwide action, and are designed to ensure that Vietnam possesses digital technology infrastructure on par with that of more advanced countries by 2030, and becomes a regional and global digital technology hub by 2045. The need for DCs is growing exponentially in Vietnam, and DC service has become an essential service. Therefore, Vietnam’s rate of investment in the DC sector is expected to increase drastically in the coming years, and to prompt foreign investors to enter the attractive market in Vietnam.

### 2. Recent Changes to the Legal Landscape Governing Data Centers

In Vietnam, DCs and related services are not completely new concepts; some investors currently are operating in this sector. However, despite the critical role and rapid development of DCs, until recently Vietnam lacked a clear, comprehensive, and unified legal framework to govern DCs and related services. Some key aspects of investment decisions were not regulated clearly; for instance, (i) whether DC services were telecom services, database services, computer and related services, or equipment leasing, (ii) whether

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<sup>1</sup> Resolution No. 175/NQ-CP of the Government dated October 30, 2023 approving the National Data Centers Project.

DC services were subject to market access restrictions applicable to foreign investors, and (iii) which licensing procedure(s) applied to registration of DC business (including whether or not a specific license or regulatory registration was required). These issues confused not only investors seeking to expand their business in this sector, but also local regulators, resulting in inconsistent interpretations of the law by local authorities in Vietnam and hesitation on the part of investors who otherwise wished to invest in this promising sector.

Fortunately, the situation has changed, and the number of unclear regulations diminished during the latter half of 2024, with the entry into force of the new Telecom Law and the enactment of Decree 163, which introduced a more structured, robust regulatory framework for DCs and DC services.<sup>2</sup> These regulatory developments seek to provide greater clarity as to the investment, operation, and management requirements applicable to DCs and DC services, to address the challenges caused by regulatory uncertainty, and to promote the development of Vietnam's digital infrastructure.

However, even these latest regulations do exhibit certain deficiencies, and raise concerns that could impede effective implementation and enforcement in the years ahead. In the following sections, we summarize the notable provisions of the latest legal framework governing DCs and DC services, which hold both opportunities and challenges for foreign investors.

### 3. Key Noteworthy Points in the New Legislation

#### 3.1. DC and DC Services are Redefined

"Data centers" are defined as telecommunications work, including the houses, stations, cable systems, computer systems, electricity, and auxiliary devices installed therein to process, store, and manage the data of one or several organizations and individuals.<sup>3</sup> "Data center services" are defined as telecommunications services that provide certain functions, including the processing, storage, and extraction of information for users via a telecommunications network by leasing part or all of a data center.<sup>4</sup> Under Vietnamese law, DC services are classified as value-added telecommunications services.<sup>5</sup>

As noted in Section 2, before the recent legislation, no definition of DC was codified; instead, DCs were mentioned in a circular issued by the Ministry of Information and Communications (currently known as the Ministry of Science and Technology due to recent government restructuring)<sup>6</sup> on the application of technical regulations and standards to DCs.<sup>7</sup> DCs were defined as construction work, including technical infrastructure

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<sup>2</sup> Law No. 24/2023/QH15 of the National Assembly dated November 24, 2023, on Telecommunications ("Telecom Law"); Decree No. 163/2024/ND-CP of the Government dated December 24, 2024, detailing a number of articles and implementation measures of the Law on Telecommunications ("Decree 163").


<sup>3</sup> Telecom Law, Article 3.23.

<sup>4</sup> Telecom Law, Article 3.9.

<sup>5</sup> Telecom Law, Article 3.9; Decree 163, Article 5.2.(dd).

<sup>6</sup> Please see (Vietnamese only): [Hoàn thiện phương án sắp xếp, tinh gọn tổ chức bộ máy của bộ, ngành; Bộ Khoa học và Công nghệ công bố các quyết định về công tác tổ chức, cán bộ](#)

<sup>7</sup> Circular No. 03/2013/TT-BTTTT of the Ministry of Information and Communications dated January 22, 2013, on application of technical regulations and standards to data centers (as amended).



(stations, cabling systems) and computer systems and auxiliary equipment installed therein, to store, exchange, and centrally manage data for one or more organizations or individuals.<sup>8</sup> “Data center services” were listed as a conditional business line in the laws on investment, but no detailed explanation was provided.<sup>9</sup> Notably, no classification was provided for DCs and DC services, which led to debates on the nature of this facility and services in an effort to determine the statutory requirements applicable to these activities, in particular whether or not DCs and the DC services may be classified as, and are subject to requirements applicable to, telecommunications infrastructure and services. Consequently, prior to July 1, 2024, (the date when the Telecom Law entered into force), foreign investors that invested in the provision of DC services in Vietnam had to deal with uncertainties in the law and inconsistent application of the law by local authorities, as the applicable business lines and foreign investment restrictions were unclear.

Starting July 1, 2024, the redefinition of DC and DC services in the Telecom Law, as well as the classification of DC services as value-added telecommunications services, make a substantial difference to determining the proper classification of business lines, which is critical for foreign investors seeking to identify relevant business lines, foreign investment restrictions, and requirements. (For more on this issue please see Section 3.2 below.)

Despite the positive aspects of these new definitions, they also could create practical challenges as DC technology changes. The manner in which the new law defines DC involves listing the components of DCs (houses, stations, cable systems, computer systems, electricity, and auxiliary devices installed thereon) and the functions of DCs (processing, storage, and management of the data of one or several organizations and individuals). In the same manner, DC services are defined by listing the functions of the service (processing, storage, and extraction of information for users) and the method of deployment of those functions (by leasing part or all of a DC). There is no further guidance on those concepts in the law, or from the relevant authorities. We see the current definitions of DC and DC services as quite limiting, because they may not capture all types of DCs and DC services clearly. In addition, given the rapid recent pace of technological advancement, DC technology is evolving, and new components, features, and functions can be anticipated. Given this, it is unclear whether DCs and DC services featuring those new components, features, and functions will continue to fit the existing definitions and be deemed DCs and DC services as regulated in the law. The handling of these issues may depend on the interpretation and application of the law by the relevant authorities.

### 3.2. No Foreign Ownership Limit


This may be one of the most valuable legal clarifications. Due to the previous uncertainty in the classification of DC services, determining the foreign ownership limit (“FOL”) applicable to foreign investors seeking to invest in DC businesses in Vietnam was a bottleneck issue that cost significant time and effort to overcome.

Before July 1, 2024, depending on the detailed explanations investors provided about potential DC businesses and local authorities’ interpretations of the law, DC services could be classified as either telecommunications services (CPC 843\*\*, as telecom-related services), or non-telecommunications services (e.g., leasing or rental services relating to other machinery and equipment (CPC 83109), data processing

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<sup>8</sup> Circular No. 03/2013/TT-BTTTT (as amended), Article 3.1.

<sup>9</sup> Law No. 61/2020/QH14 of the National Assembly dated June 17, 2020, on investment (as amended), Appendix IV, Item 130.



services (as computers and related service and database services (CPC 843 and CPC 844)). Vietnam does not open investment in telecommunications services to foreign investors without restriction, and certain FOLs, which vary from 50% to 70%, or uncommitted, will apply, depending on the type of services to be provided and the nationality of the investors; however, there is no FOL for non-telecommunications services. In practice, we observed that the registered business lines of some enterprises providing DC services in Vietnam (including foreign-invested enterprises) were inconsistent. As a result, DC service providers were subject to different FOLs, depending on how they declared the business lines related to their DC services and the opinion of local authorities.

Starting July 1, 2024, the situation changed for the better. Now DC services are officially classified as value-added telecommunications services, but foreign investors will not be subject to FOL when investing in a Vietnam-based enterprise that provides DC services or in a business cooperation contract to provide DC services in Vietnam.<sup>10</sup> As a result, foreign investors can declare DC services as value-added telecommunications services, but unlike traditional telecommunications services, which are subject to FOLs, foreign investors now can contribute and own up to 100% of the charter capital in a Vietnam-based enterprise that provides the DC service.

### 3.3. Introduction of a “Light-Tough” Approach to DC Service Providers (including Offshore Providers)

In Vietnam, regulators typically take a “heavy-handed” approach to telecom services, requiring applicants to satisfy stringent conditions (for example, conformity to master plans, statutory capital, and comprehensive technical and feasible business proposals) and undergo complex licensing procedures (i.e., obtaining telecommunications licenses) which often cause significant delays, due to multiple rounds of comments on application dossiers. In fact, obtaining telecommunications licenses may be one of the most time-consuming procedures in Vietnam.

Unlike other conventional telecom services and activities, DC services now are subject to a more relaxed licensing procedure, as Vietnam’s legislation now takes a “light-touch” approach, with a focus on post-licensing inspections, with the intent to promote this dynamic, vital business. The Telecom Law and Decree 163 introduce two new administrative procedures: (i) registration for provision of telecom services (“Registration”) applicable to Vietnam-based DC service providers (“Onshore DC Service Providers”), and (ii) notifications of provision of telecom services (“Notification”) applicable to offshore DC service providers that provide DC services in Vietnam in the form of cross-border supply (“Offshore DC Service Providers”). These two procedures require less, and simpler, documentation, and will require less time for regulatory review and assessment. The regulatory timeframe for completing Registration is three business days from receipt of dossiers for the licensing authority to review and confirm the validity and sufficiency of the dossiers, and five more business days for the authorities to issue a certificate of registration and publish information about the successful registration of the applicant on the relevant electronic information portal.<sup>11</sup> The timeframe for Notifications is three business days from the receipt of dossiers for the licensing authority to review and confirm the validity and sufficiency of the dossiers, and if there are no further comments on the Notification dossier from the licensing authority, the Notification is likely to be considered complete and the licensing

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<sup>10</sup> Telecom Law, Article 29.1.(a).

<sup>11</sup> Decree 163, Article 44.

authority will identify the Offshore DC Service Provider that has completed the Notification publicly available on its electronic information portal.<sup>12</sup>

The licensing authority is the Vietnam Telecommunications Authority under the Ministry of Science and Technology (VNTA).<sup>13</sup> Although the administrative procedures for DC services currently are quite simple, applicants still might face some practical difficulties and delays due to the novelty of the procedures, as well as the recent government restructuring.

### 3.4. Noteworthy Rights and Obligations of DC Service Providers

To regulate the provision of DC services in a good manner, the Telecom Law and Decree 163 provide for other regulatory rights and obligations, which are applicable to both Onshore DC Service Providers and Offshore DC Service Providers (apart from the Registration and Notification requirements). Some of the key rights and obligations are below.

#### (1) Onshore DC Service Providers<sup>14</sup>

Rights	Obligations
<ul style="list-style-type: none"> <li>Some rights of non-facilities-based telecom service providers (e.g., constructing, installing, and owning telecommunications equipment systems and transmission lines within the scope of relevant facilities and public service points to provide DC services to DC service users; leasing transmission lines to connect telecommunications equipment systems, facilities, and public service points with each other and with the public telecommunications networks of other telecommunications enterprises; and being allocated telecommunications resources, as prescribed by law.)</li> <li>Being exempt from the obligation to pay compensation for indirect damages or lost profits if the DC service fails to ensure service quality and time.</li> <li>Not being responsible for the content of service users' information in the process of processing, storing, and retrieving information, except as otherwise prescribed by law.</li> </ul>	<ul style="list-style-type: none"> <li>Compliance with the laws on cyber information safety, cyber security, personal data protection, and other relevant laws.</li> <li>Not accessing, exploiting, or using service users' data that is processed, stored, and retrieved through the DC service without the user's consent.</li> <li>Taking necessary measures in a timely manner to prevent access to information at the request of competent state agencies, as prescribed by law.</li> <li>Not monitoring or supervising service users' information, except in response to a request from a competent state agency, as prescribed by law.</li> <li>Storing and managing information provided by service users when entering into contracts for the provision and use of the DC services, as prescribed by law.</li> <li>Announcing the quality of the DC services provided.</li> <li>Announcing the conformity of the DC with standards and technical regulations, as prescribed by law.</li> </ul>

<sup>12</sup> Decree 163, Article 45.

<sup>13</sup> Decree No. 55/2025/ND-CP of the Government dated March 2, 2025, prescribing functions, tasks, powers and the organizational structure of the Ministry of Science and Technology, Article 3.21.

<sup>14</sup> Telecom Law, Article 29.

## (2) Offshore DC Service Providers<sup>15</sup>

As part of the “light-touch” approach (i.e., not being overly prescriptive), Offshore DC Service Providers have limited rights and obligations compared with Onshore DC Service Providers. However, even though the provisions of the current law that relate to Offshore DC Service Providers are limited, they help bring clarity to the business activities of Offshore DC Service Providers; at the same time, they will create a compliance burden compared with the previous legal framework (under which these service providers essentially were not subject to any obvious obligations).

### 3.5. Points To Note When Providing DC Services to Vietnamese State Agencies

Pursuant to the new regulations, it is possible for all DC service providers, including Offshore DC Service Providers, to provide the DC services to state agencies in Vietnam. However, the provision of these services is subject to more stringent statutory requirements than are applicable to the provision of DC services to non-state entities in Vietnam. In addition, the current legal framework may make provision of DC services on a cross-border basis quite challenging. When providing DC services to Vietnamese state agencies, service providers must comply with the following requirements:<sup>16</sup>

- (1) The data of state agencies using the DC services must be stored in Vietnam only.
- (2) Information systems used in the provision of DC services to state agencies must be fully compliant with cyber information security law when put into operation.
- (3) DC service providers are obligated to coordinate with, provide complete information to, and design technical infrastructure and measures to ensure information security for the operation and protection of information systems to state agencies (upon request) to deploy measures to ensure information system security in accordance with the laws on cyber information security.

These requirements can present a challenge to the provision of the DC services to state agencies in Vietnam by Offshore DC Service Providers, especially in terms of the prohibition on storage of state agency data outside of the territory of Vietnam. In order to provide DC services to state agencies in Vietnam, Offshore DC Service Providers will need to make necessary technical arrangements to ensure that all of the data of the state agencies is stored in Vietnam, or the services cannot be provided.


## 4. Conclusion

Given the importance of “data” and the growing demand for data use and DCs for DX and digital economy development, as well as the positive changes in the legal framework that governs DC services, the rate of investment in DC services and projects in Vietnam might increase significantly. Understanding these new regulatory requirements will be essential for businesses operating in or looking to enter Vietnam’s DC sector,

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<sup>15</sup> Decree 163, Article 29.

<sup>16</sup> Decree 163, Article 30.



both for purposes of strategic planning and compliance and to enable them to operate current businesses or join this sector smoothly. Despite the positive changes, since Vietnam's framework to govern DCs and DC services is relatively new, businesses might find it difficult to understand and apply the regulations, in practice. We also believe these new DC regulations still contain some uncertainties and vagueness, and believe that Vietnam will continue to improve its legal framework to build a clear and comprehensive set of regulations. As such, we strongly encourage businesses and investors to stay updated and seek professional legal advice to navigate potential challenges and maximize opportunities in this rapidly expanding industry.

Our firm is committed to supporting businesses during this dynamic period. We have a team of experienced lawyers who specialize in technology and other relevant fields, such as data protection; please feel free to reach out to us if you have any questions or would like assistance with these or other issues.

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