LEGAL FORUM

VALID CONSENT FOR PERSONAL DATA PROCESSING

Vietnam Personal Data Protection Regulations

Vietnam has significantly strengthened its personal data protection (PDP) framework by recent adoption of Law No.91/2025/QH15 dated 26 June 2025 (PDPL) and Decree No. 356/2025/ND-CP dated 31 December 2025 (Decree 356/2025) which replaces the previous Decree No.13/2023/ND-CP dated 17 April 2023. These new regulations aim to establish clear, stricter and consistent legal requirements for the collection and processing of personal data, as well as combat threats such as personal data abuse, illegal trading, and unauthorized disclosure problems that have become increasingly serious in the digital socio-economy.

Among other requirements under PDP regulations, data subject consent is the key condition for processing data. Pursuant to the PDPL, consent must be freely provided by the data subject upon being fully informed of the following information:

- types of personal data to be collected, the specific purposes of processing;
- the identity of the data controller or the data controller and processor involved; and
- the related rights and obligations of data subjects, including but not limited to right to opt out or withdraw consent.

Data subject consent must be explicitly indicated and tailored to each intended use and must not be tied to mandatory consent to purposes other than those stated in the agreement. Silence or lack of response shall not be deemed as consent, and default consent settings or unclear, misleading instructions that cause confusion between consent and non-consent to the data subjects are expressly prohibited under Decree 356/2025.

Decree 356/2025 also emphasizes that the data controllers or the data controllers and processors are fully responsible for proving the legality of their consent mechanisms and must bear the burden of proof in demonstrating that valid consent has been obtained.
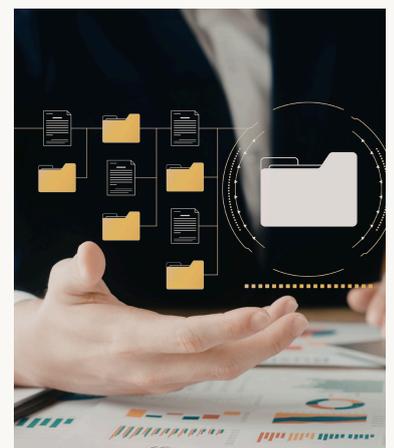
How to Collect Valid Consent

In early 2026, the Vietnamese society observed several high-profile instances of data processing involving large-scale digital platforms, including Zalo and TikTok. These platforms implemented 'forced consent' mechanism by bundling non-essential processing purposes (marketing and advertising) as a prerequisite for users' service access without offering viable alternatives. Such acts raised widespread public objection and drew formal concerns from competent authorities and eventually have been explicitly treated as non-compliance by the competent authorities.

Learning from the above, data controllers or data controllers and processors should exercise high levels of prudence in establishing consent obtaining mechanisms. In that context, the following practices are recommended to ensure collection of valid consent and enhance data protection compliance in Vietnam:

- *Voluntariness*: Data subjects must be given with free choice to grant consent. Consent should not be bundled with other terms and conditions or unrelated service or treated as condition of contract performance or service provision, except for where such consent is strictly necessary for contract performance or service delivery. For example, customers should not be forced to agree to non-essential purposes (such as marketing or promoting other sales of other stores) as a condition of goods purchase.

- *Transparency*: Data controllers or the data controllers and processors should adopt an active opt-in approach, where consent requests should not be pre-ticked or designed in a way that requires users to reject consent. Consent should be given through clear affirmative action and may not be implied from silence, inactivity, or non-response. In addition, notices should utilize clear and plain language to ensure the data subject is fully informed. For example, clicking an "I agree" button, a clear "yes" response or signing a form can be sufficient.

- *Temporal requirement*: Consent must be obtained before personal data is collected or processed. Requesting consent after payment or service completion is generally non-compliant.

- *Record*: The burden of proof regarding valid consent rests with the data controllers or the data controllers and processors. This means that comprehensive data consent logs should be maintained for any future audits or investigations.

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