

NEW DRAFT LAW AIMING AT UNIFYING DATA PROTECTION LEGISLATIONS IN VIETNAM

The increasing use of technology and internet leads personal data to be more easily accessible but also vulnerable to misuse, damage, or loss. Balancing privacy and security has become a more important issue than ever. Data protection legislations have been enacted in various countries in order to regulate how information is collected, used and protected.

Vietnam does not stand out from the trend. There have been many legislations regulating the personal data protection enacted in Vietnam, including laws, ordinances, decrees, circulars, decisions, but there more or less exists inconsistencies between each other. Recently Decree No. 13/2023/ND-CP on Personal Data Protection specializing in personal data protection was enacted; however, the Decree itself reveals certain limitations such as not yet comprehensively covering various aspects of life and business or unifying inconsistent provisions under legislations.

It is therefore essential to have a Law on Personal Data Protection (“**PDPL**”) with a broader framework for governing data protection.



For this purpose, the draft PDPL has been made available for public consultation, introducing a more thorough legal regime regulating the data collection and process by individuals and organizations throughout various industries such as marketing, advertisement, AI, banking, finance and insurance.

Below are key highlights of the draft PDPL that may be of interest:

1. More comprehensive definition of personal data

Under the draft PDPL, “**personal data**” is information in the form of symbols, letters, numbers, images, sounds or similar forms, in an electronic environment, associated with a specific person or helping to identify a specific person.

Personal data is classified into “*basic personal data*” and “*sensitive personal data*”:

- “*basic personal data*” refers to information such as name, date of birth, gender, place of birth, nationality, mobile phone, identity card information, marriage;
- “*sensitive personal data*” refers to information such as political views, religious views; health status; racial origin, sexual orientation; data on crimes; customer information of financial institutions; data on land use; data on individual locations.

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2. Inheriting and enhancing principles on personal data protection

Personal data shall be collected, stored, used and processed, publicly and transparently, in terms of scope, purpose, and time of storage. During the whole process, personal data must be protected properly.

Notably, the Draft PDPL repeats the concept of “consent from the data subject” for the purpose of data collection and process. As for group companies having their data processing activities, that *a consent given by a data subject to a company does NOT include other companies within the group*. Each and every group company will independently be responsible for their obligations.

Trading of personal data in any form is prohibited.

3. Elaborating on the concept “consent from a data subject”

Generally, a consent of the data subject may be considered valid only if it satisfies the following:

- voluntariness of the data subject; and
- the full awareness of the data subject about (i) type of personal data processed, (ii) purpose of processing personal data, (iii) organization or individual processing the personal data, and (iv) rights and obligations of the data subject.

Such consent shall be given (a) by an affirmative act that provides a clear, specific indication, such as in writing or by ticking a consent box and (b) in a format that can be printed, reproduced in writing, including in electronic form or in a verifiable format.

Any silence or non-response by the data subject shall not be considered as his or her consent.

4. Controlling the outbound transfer of personal data

Anyone sending personal data outside of Vietnam must complete an impact assessment and submit a report to the competent authority within 60 days from the day of such transfer. Any subsequent amendments thereto shall also be reported to the competent authority. An annual or ad hoc inspection may be initiated by the competent authority on a case-by-case basis. The outbound transfer of personal data may be stopped by the authorities in case of any non-compliance detected.

Any of the following circumstances may be considered outbound transfer of personal data:

- (i) sharing personal data with recipients outside the territory of Vietnam;
- (ii) sharing personal data at conferences, seminars, meetings, discussions abroad;
- (iii) sending documents or emails containing personal data to recipients outside the territory of Vietnam;
- (iv) publishing personal data on cyberspace for recipients outside the territory of Vietnam;
- (v) providing personal data to other organizations, businesses, individuals to carry out business activities; and
- (vi) providing personal data to fulfill legal obligations abroad or according to the laws of the host country.



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