

NOTABLE CONTENTS IN THE DRAFT LAW ON PERSONAL DATA PROTECTION

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The issue of personal data protection is currently regulated by Decree 13/2023/ND-CP issued by the Government on April 17, 2023 on personal data protection (**Decree 13**). However, the implementation of this Decree has revealed a need for a specialized law on personal data protection to ensure consistency with domestic laws as well as compatibility with international laws and practices. The new law will aim not only to protect personal data rights but also to enhance the responsibility of relevant parties and prevent data violations. Importantly, the law's provisions must comply with the Constitution 2013 and international commitments to which Viet Nam is a party. To meet these requirements, the Ministry of Public Security has developed a Proposal for a Law on Personal Data Protection (**Draft Law**) with a number of notable points as follows:

Regulations on subjects of application and definition of personal data

As stipulated in the Draft Law, the subjects of application of the law include (i) Vietnamese agencies, organizations and individuals; (ii) Foreign agencies, organizations and individuals in Viet Nam; (iii) Vietnamese agencies, organizations and individuals that operate in foreign countries; (iv) Foreign agencies, organizations and individuals that directly process or are involved in processing personal data in Viet Nam; (v) Agencies, organizations and individuals collecting and processing personal data of foreigners within the territory of Viet Nam. Subject (v) mentioned above has been supplemented as compared to Decree 13, which reflects an emphasis on the protection of personal data not only for Vietnamese citizens but also for foreigners who live, work or engage in activities in Viet Nam.

In addition, some definitions in Decree 13, such as personal data, basic personal data and sensitive personal data, have been recorded in the Draft Law. The Draft Law also adds an information field about land users, and land data containing information on land users is classified as a type of sensitive personal data. These definitions are stipulated to be consistent



with the legal documents related to personal data, such as the Civil Code 2015, the Law on Identification 2023, the Law on Medical Examination and Treatment 2023, etc., as well as the importance of each type of personal data.

Regulations on the principle of personal data protection

In addition to inheriting the principles from Decree 13, the Draft Law emphasizes the principle that *“Personal data shall not be bought or sold in any form”* in Clause 1, Article 3, which creates the legal basis for preventing and applying sanctions against acts of buying and selling personal data, especially sensitive personal data, in practice. Moreover, the Draft Law supplements the principle that *“Personal data collected must be appropriate and limited to the scope and purpose of processing. Any parent company, subsidiary companies, and each company within an economic group and corporation are responsible for independently protecting personal data in accordance with legal provisions. The consent of the data subject for one company to process his/her personal data does not mean the consent for all companies in the same economic group and corporation”* in Clause 4, Article 3 of the Draft Law. This principle ensures transparency and separate accountability for each company within a corporate ecosystem, preventing any misuse of personal data through unauthorized sharing. However, this principle also poses significant challenges in data management for large corporations, where internal data sharing often plays an important role in business operations and

development. Therefore, enterprises need to consider establishing a data management mechanism along with optimizing related compliance procedures in the event that this principle is adopted and comes into effect.

Regulations on personal data protection in labor monitoring and recruitment, social media services, and communication services

Firstly, in labor monitoring and recruitment

Article 26 of the Draft Law stipulates several employers' obligations related to personal data as follows:

- (i)** Employers can only request applicants to provide information in the list of publicly available recruitment content or employee profiles;
- (ii)** Information provided in employee profiles is processed in accordance with the provisions of law and must be consented to by the data subject;
- (iii)** Employee profiles are stored for a period of time as prescribed by law and must be deleted when they are no longer required or when the prescribed period has expired;
- (iv)** When employee personal data is updated in the global employee data system:
 - The legal entity collecting and processing personal data must prove that the collection and processing of data is legal;
 - The data subject is responsible for the legality of the information provided by him/her.
- (v)** In addition, foreign companies that recruit and process personal data of Vietnamese employees living and working in Viet Nam must:
 - Complying with the laws on personal data protection as required by Vietnamese law;
 - Having a written agreement or contract with the investment company in Viet Nam on the processing of personal data of employees;
 - Providing the investment company in Viet Nam with a copy of the data on Vietnamese employees living and working in Viet Nam to comply with the provisions of the law when necessary.

Secondly, in social media services and communication services

Organizations and individuals providing social media services and over-the-top media services (OTT) are responsible for:

- (i)** Protecting the personal data of Vietnamese citizens when operating in the Vietnamese market or when they appear on mobile application stores provided to the Vietnamese market;

(ii) Clearly disclosing the content of personal data collected when data subjects install and use social media, OTT services. Not collecting personal data unlawfully and beyond the scope of the agreement with customers;

(iii) Not being permitted to request to take photos of citizen identification cards, or identity cards as a factor for account authentication;

(iv) Providing users with options to reject the collection and sharing of cookies;

(v) Providing a "No tracking" option or tracking social media and OTT service usage only with the users' consent;

(vi) Giving specific, clear, written notices of the sharing of personal data as well as the application of security measures when conducting advertising and marketing activities based on customers' personal data;

(vii) Any engagement in eavesdropping, wiretapping, or recording calls and reading text messages without the consent of the data subject is a violation of the law.

The above provisions are all new points recorded in the Draft Law compared to Decree 13, emphasizing strict control over the processing of personal data. In particular, foreign companies that recruit and process the personal data of Vietnamese employees living and working in Viet Nam must have an agreement with domestic investment companies on the processing of personal data and provide copies of data related to Vietnamese employees. For international platforms such as Meta, YouTube, and TikTok, compliance with regulations when operating or appearing on the app store in Viet Nam is mandatory, all account authentication methods that require taking photos of citizen identification cards or identity cards are also prohibited.

In general, these regulations aim to protect the privacy of individuals, enhance transparency in data collection and processing process, prevent data abuse and ensure compliance with Vietnamese law, even for foreign companies operating in Viet Nam.

Transfer of personal data abroad

Compared to Decree 13, the Draft Law supplements regulations on cases of transferring personal data abroad, including:

- (i)** Sharing personal data with recipients outside the territory of Viet Nam;
- (ii)** Sharing personal data at conferences, seminars,

meetings, or discussions held abroad;

- (iii)** Sending documents or emails containing personal data to recipients outside the territory of Viet Nam;
- (iv)** Publishing personal data on cyberspace so that people outside the territory of Viet Nam can receive it;
- (v)** Providing personal data to other organizations, businesses, individuals to carry out business activities;
- (vi)** Providing personal data to fulfill legal obligations abroad or in accordance with the laws of the host country.

The Draft Law also inherits the requirements for transferring personal data abroad, including: (i) making a Dossier on the impact assessment of the outbound transfer of personal data (**Impact Assessment Dossier**); (ii) submitting the Impact Assessment Dossier to the Personal Data Protection Authority within 60 days from the date of personal data processing; (iii) always having the Impact Assessment Dossier available for inspection and assessment by the Personal Data Protection Authority; (iv) inspecting the transfer of personal data abroad once a year.

It can be seen that such cases as sharing data at conferences, sending documents via email, or publishing data on cyberspace have reflected the practical operations in today's global environment. Specifying the cases for transferring personal data abroad will help organizations and individuals easily perceive and comply with the regulations. However, strict procedural requirements and annual inspections can create challenges for organizations and businesses. To ensure feasibility in practice, flexibility and detailed guidance are essential for organizations and businesses during the implementation process.

With notable new points, the Draft Law not only meets the requirements for protecting individual rights but also conforms to the global trend in protecting personal data towards a safe and sustainable digital environment in Viet Nam. Currently, the Draft Law is in the stage of collecting comments from agencies, organizations and individuals, and is expected to be approved by the National Assembly at the 9th National Assembly Session in May 2025. Enterprises, organizations and individuals can contribute their comments and need to monitor the process of the Draft Law completion to promptly update and comply with the new regulations when the Law on Personal Data Protection comes into effect.