

# SOME NEW POINTS OF THE DECREE GUIDING CYBERSECURITY LAW

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On August 15, 2022, the Government issued Decree 53/2022/ND-CP elaborating a number of articles of the Law on Cybersecurity 2018 of Viet Nam (**Decree 53**). Decree 53 includes 2 groups of regulations namely: (i) Regulations applicable to state agencies, addressing such issues as the order and procedure for applying cybersecurity protection measures; coordination between relevant functional Ministries and central authorities in appraising, assessing, inspecting, supervising, responding to, and remedying cybersecurity incidents regarding significant national security information system; and (ii) Regulations applicable to domestic and foreign enterprises: domestic enterprises' data storage obligation; foreign enterprises' obligation to establish branches or representative offices and store data in Viet Nam. In this article, NHQuang will focus on introducing the group of regulations applicable to enterprises.

*Firstly*, regulations on the kinds of data to be stored in Viet Nam, including:

**(i)** Data on personal information of service users in Viet Nam (data on information in the form of symbols, letters, numbers, images, sounds, or equivalences to identify an individual);

**(ii)** Data created by service users in Viet Nam (data on information in the form of symbols, letters, numbers, images, sounds, or equivalences reflecting the process of participating, operating, and using cyberspace of service users and information on devices and network services used for connection with cyberspace in the territory of the Socialist Republic of Viet Nam), including: account names, service use time, information on credit cards, emails, IP addresses of the last login or logout session, and registered phone numbers in association with accounts or data;

(iii) Data on relationships of service users in Viet Nam (data on information in the form of symbols, letters, numbers, images, sounds, or equivalences reflecting and identifying relationships of service users with other people in cyberspace): friends and groups that such users have connected or interacted with.



*Secondly*, regulations on the entities who are obliged to store data, establish branches or representative offices in Viet Nam:

**(i)** Domestic enterprises providing telecommunications, internet and value-added services in Viet Nam's cyberspace that collect, exploit, analyze or process data on personal information, relationships of their service users or data created by their service users in Viet Nam shall store such data in Viet Nam.

**(ii)** Foreign enterprises conducting business in Viet Nam in one of the fields as stipulated in Point a Clause 3, Article 26 of Decree 53, for example: telecommunications services; storage and sharing of data in cyberspace; provision of national or international domain names for service users in Viet Nam; e-commerce; online payment; payment intermediaries; connection and transportation services in cyberspace; social media and social communication; etc. shall store data and establish branches or representative offices in Viet Nam in the case where services provided by such foreign enterprises are used to serve violations of cybersecurity law, which has been notified and requested for cooperation, prevention, investigation, and handling in writing by the Department of Cyber Security and Hi-tech Crime Prevention of the Ministry of Public Security of Viet Nam but the doers fail to comply, incompletely comply or prevent, obstruct, disable, or nullify the effect of cybersecurity protection measures performed by cybersecurity protection forces.

*Thirdly*, regulations on the obligation to store data, establish branches or representative offices in Viet Nam of domestic and foreign enterprises:

- The form of data storage in Viet Nam shall be decided by enterprises;
- The time for data storage starts when enterprises receive the request for data storage until the end of the time prescribed in such request. The mandatory storage time is 24 months;
- The time for establishment of branches or

- representative offices in Viet Nam in accordance with Article 26, Decree 53 shall start when the enterprises receive the request for establishment of branches or representative offices in Viet Nam until such enterprises terminate their operation in Viet Nam or the prescribed service is no longer available in Viet Nam;
- The order and procedures to request for data storage, establishment of foreign enterprises' branches or representative offices in Viet Nam:
    - (i)** The Minister of Public Security of Viet Nam shall issue a decision requesting for data storage and establishment of branches or representative offices in Viet Nam;
    - (ii)** The Department of Cyber Security and Hi-tech Crime Prevention of the Ministry of Public Security of Viet Nam shall provide notifications and guidelines, monitor, supervise, and urge enterprises to implement the request for data storage and establishment of branches or representative offices in Viet Nam;
    - (iii)** Within 12 months from the date of the decision by the Minister of Public Security of Viet Nam, foreign enterprises shall complete the data storage and establishment of branches or representative offices in Viet Nam.

## **COMMENTS AND RECOMMENDATIONS**

The promulgation of Decree 53 aims to provide more specific guidance for the obligation to store data, and establish branches or representative offices in Viet Nam as stipulated in the Law on Cybersecurity 2018. Decree 53 comes into force as of October 1, 2022. Enterprises need to update and study the provisions of this Decree to determine if the scope of their services is subject to the cases requested to store data, establish branches or representative offices in Viet Nam then develop a plan to implement such requirements accordingly. At the same time, they shall perform the responsibilities for ensuring information security in cyberspace as specified in Clause 2, Article 26 of the Law on Cybersecurity 2018, ensuring compliance with legal obligations. It should also be noted that, according to the Draft Decree on penalties for administrative violations against regulations on cybersecurity, the act of "Failing to store data, establish branches or representative offices in Viet Nam as prescribed in Clause 3 Article 26 of the Law on Cybersecurity" may result in a fine of between 80 and 100 million Viet Nam dong and withdrawal of business license in Vietnamese market.