

Vietnam: The Personal Data Protection Decree (“PDPD”) drafting process has reached its final stage

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Almost a year after its Resolution No. 27/NQ-CP dated 27 March 2022 approving the first PDPD dossier, on 7 February 2023, Vietnam’s Government issued Resolution No. 13/NQ-CP dated 7 February 2023 (“**Resolution 13**”) approving the revised PDPD dossier prepared and submitted by the Ministry of Public Security (“**MPS**”). Resolution 13 approves **five cases** of data processing without data subject consent: (1) to protect the lives and health of data subjects or others in emergency cases (controllers, processors, controlling and processing entities and third parties that are allowed to process such data without data subject consent must prove its eligibility of this case); (2) public disclosure of personal data under compulsion of law; (3) processing by competent authorities (i) in emergency cases of national defense, national security, social security and order, mass disaster, or dangerous epidemic; (ii) when there is a threat to national defense and security but an announcement of state emergency has yet to be made; (iii) to prevent and fight riots, terrorism, crimes and law violations; (4) to implement contractual obligations of data subjects towards relevant bodies, organizations and individuals in accordance with the law; and (5) to serve the operation of state authorities as set forth in specific laws. The MPS, as authorized by the Government, was assigned to seek opinion from the Steering Committee of the National Assembly of Vietnam (“**NASC**”) on the PDPD dossier before the Government officially issues the PDPD, especially the five cases above, as required by applicable law.

At the first meeting session of 2023 (i.e., the 20th session) held on 13, 14 and 15 February 2023, the NASC discussed and commented on, *among others*, the PDPD dossier submitted by the MPS. Upon release, if the NASC’s comments on the PDPD dossier are positive, it is expected that the Government will finalize and issue the official PDPD within the first Quarter 2023 and the PDPD will take effect from 1 July 2023.

Although the latest PDPD draft is yet publicized, based on our observation and projection, it is likely that the PDPD draft version submitted to the NASC drastically differs from the one in February 2021 that was available to public. Notably, it appears that the Government will change the management approach from pre-implementation registration/approval to post-implementation review in terms of sensitive personal data processing and cross-border data transfer, giving the businesses more liberty and flexibility. This shows that the Government and the MPS have taken due consideration of public concerns and comments from many state authorities and stakeholders from various sectors.

Below are some key management measures supposedly discussed, considered and set forth in the forthcoming PDPD draft that, if proven true, will demonstrate the Government’s increased effort in harmonizing and balancing state management and public concerns, especially when compared to the effort demonstrated by the content in the published draft:

1. **Conducting data protection impact assessment.** A data controller (a data processor on behalf of a data controller) or data controlling and processing entity would be required to prepare and officially issue a written dossier for data protection impact assessment that contains compulsory contents in a prescribed form from the commencement of the processing. The dossier must be sent to the MPS (i.e., Department for Cybersecurity and Hi-tech Crime Prevention (“A05”) - a subordinated body of MPS) for review and supervision within a specific period after commencement of the data processing. This dossier must be up to date and available at any time for authority inspection.
2. **Processing of sensitive personal data.** The pre-processing registration with a PDP Committee noted in the public draft is abolished. Instead, in addition to the impact assessment above, it is required to appoint an unit specializing in personal data and a person in-charge of personal data protection and to inform MPS (i.e., A05) of such unit and person in-charge. It seems that some specific enterprises, e.g., super small, small, medium-size enterprises and start—up enterprises, except for those directly doing data processing business, might enjoy a little relaxation of this requirement during their first few years of establishment.
3. **Cross-border personal data transfer procedure.** Happily, the necessity of approval of the PDP Committee before transferring the Vietnamese’ personal data overseas is likely removed. Instead, the following conditions are being discussed and considered. Particularly, transferors of Vietnamese’ personal data may conduct overseas transfers where (i) it prepares and issues a written dossier for impact assessment of overseas data transfer that contains compulsory contents in a prescribed form, (ii) sends the issued dossier to MPS (i.e., A05) within a specific period from the start of transfer for review and supervision, and (iii) notifies MPS (i.e., A05) of the data transfer and detail of the transferee who is in-charge of data after the completion of the transfer. This dossier must be available at any time for authority inspection and the most updated. MPS might request suspension of the data transfer if the transferred data could be used to infringe Vietnam’s interest and security.

While it is uncertain whether the measures above really will be adopted by the Government and the NASC in the recent PDPD draft, Vietnam is taking the final step in setting the first solid brick to create a centralized legal framework on personal data protection aligning with regional and international practices and standards; better late than never.

Should you want to know further details about the recent update on the PDPD draft, please contact us.

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