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1. Introduction

For public opinion polling purposes, in July this year, the Ministry of Information and Communications of Vietnam (the “**MIC**”) released a second draft decree amending and supplementing some regulations of Decree 72/2013/ND-CP (as amended by Decree 27/2018/ND-CP) (“**Decree 72**”) on the management, provision and use of Internet services and online information (the “**Draft Decree**”). The polling process is expected to be completed in September of 2021 and the finalized version of Decree 72 is scheduled to be on the Government table for review at the end of the year.

Compared to Decree 72, the Draft Decree contains a number of new and detailed regulations with the potential to substantially impact business in this sector. The following highlights some notable key points:

2. More obligations to be imposed on cross-border information services¹

The Draft Decree provides some stricter regulations applicable to all stakeholders, especially offshore service providers, to ensure the management and use of the internet in good order.² In particular:

- Under the current regulations, considering their potential influence on Vietnamese society, cross-border information service providers with more than one million unique visitors (“**UVs**”)/month (“**Subjected Providers**”) are subject to stricter obligations (e.g., notification of contact information to the MIC and cooperation with the MIC in handling “illegal” information) in addition to the general ones. The Draft Decree increases the number of Subjected Providers by drastically reducing the qualifying quantity of UVs to 100,000 UVs/month.
- The Draft Decree imposes strict obligations that the Subjected Providers must perform, including, among others:

¹ Article 1.17 of Draft Decree

² Upholding the current regulations on management of foreign organizations or individuals engaging in cross-border provision of information to users in Vietnam, the Draft Decree maintains the provisions, generally requiring them to comply with Vietnam laws regardless of physical presence in the country and subject to the supervision and management of competent authority ensuring the internet development and management policy of Vietnam. However, the wording of such provisions is vague and the scope of application and requirements are not sufficiently clear.

- carrying out data localization³ and establishing a presence⁴ in Vietnam in light of Article 26.3 of the Cyber Security Law of Vietnam and relevant by-laws;⁵
 - for the Subjected Providers of offshore social networks, only permitting accounts, fan-pages, and content channels that have been notified to the MIC to use livestream and money earning functions;
 - setting up (not necessarily in Vietnam) a unit in-charge of handling requests from the authorities and users in Vietnam;
 - handling the complaints of users in Vietnam and authorities' requests within 24 hours from receipt of such complaints and requests (authority requests regarding livestreams must be handled within three hours of receipt);
 - within 24 hours of the authorities' request, temporarily blocking (from 7 days to 30 days, as the case may be) social network accounts, fan-pages and content channels 'regularly' providing illegal content (i.e., at least five times per month); and
- annually and extraordinarily reporting to the MIC using a prescribed form describing statistic information of services conducted by the Subjected Providers (e.g., total number of user accounts in Vietnam, total number of UVs (monthly) in Vietnam, revenues earned from Vietnam, list of users' complaints, number of user violations and handling such violations by the Subjected Providers, and contact information of Subjected Providers' representatives in Vietnam; however, it seems fine to authorize third party representatives in Vietnam).
 - Furthermore, the Draft Decree expands the scope of 'violating acts' and information contained in the services of offshore service providers that trigger authorities' administrative actions (e.g. distortion of history, false information for the purpose of causing public confusion or economic loss, information on prostitution, human trafficking, etc., or contents which infringe intellectual property (IP) rights or legitimate interests of other individuals or organizations). This is to cover prohibited acts and IP infringements under the cyber security and IP laws.

3. Clearer and stricter rules for management of social network services⁶

The Draft Decree stipulates clearer and stricter regulations on administration of both onshore and offshore social networks to prevent misuse of social networks and control both service providers and users. Accordingly, cross-border social network services provided by offshore service providers to Vietnam customers will be managed in accordance with regulations on cross-border information services as mentioned in Item 2 above.

Domestic social network services will be classified into two categories, as follows:

³ With regard to data localization requirements under Decree 72, there are no significant changes in the Draft Decree, which continues to require almost all online service providers in Vietnam (e.g., social network, online game, online news, information services on mobile network) to have at least a server system located in Vietnam.

⁴ For foreign service providers supplying online games to users in Vietnam, the current local presence requirement is kept unchanged (i.e., they must establish an entity in Vietnam to provide such services).

⁵ Of note, the Draft Decree refers to such requirements under the Cyber Security Law and its guiding regulations and does not explore further detailed requirements. As such, the (long-awaited) detailed requirements on data localization in light of Article 26.3 of the Cyber Security Law have not yet been clarified in this Draft Decree and thus may be detailed in the Decree guiding implementation of the Cyber Security Law. Given that the scope of services subject to data localization requirements under Article 26.3 of the Cyber Security Law is unclear, until the enactment of the decree guiding the Cyber Security Law, it can be said that this requirement under the Draft Decree is not intended to conclude the matter for Subjected Providers. And, the scope of Subjected Providers to be bound by this obligation shall be subject to the official language of the draft decree guiding the data localization requirements under Article 26.3 of the Cyber Security Law.

⁶ Article 1.18 of Draft Decree

- Social networks with 10,000 UVs or more per month (Type 1).
- Social networks with less than 10,000 UVs per month (Type 2).

Service providers of Type 1 are required to obtain a license for provision of a social network from the MIC, while those of Type 2 are only required to notify and obtain written confirmation of such notification from the MIC. Upon obtaining the license, Type 1 service providers are permitted to provide livestreaming or revenue-generating services, while Type 2 service providers are not permitted to do so upon obtaining written confirmation. However, Type 2 service providers are able to apply for the same licensing applicable to those of Type 1 if they want to provide the livestreaming or revenue-generating services. That means, for Type 2 service providers, unless they have obtained the license applicable to Type 1 service providers, they cannot provide livestreaming or revenue-generating services.

All the accounts, fan-pages or content channels that have 10,000 or more followers or subscribers on social networks (whether onshore or offshore) must notify the MIC of, *among others*, their contact information, whereas those with less than 10,000 followers or subscribers are exempted from such requirement, unless they want to enable livestreaming or revenue-generating services.

For the offshore service providers engaging in cross-border social network services to Vietnam customers, the requirement to obtain a license for a Type 1 social network and the requirement to notify and obtain written confirmation for a Type 2 social network shall not apply, however they can provide livestreaming or revenue-generating services in any form to the accounts, fan pages and content channels that have not notified the MIC, only as noted above.

4. Reduction of licensing steps for online game services⁷

Under Decree 72, subject to a game's classification (i.e. G1, G2, G3 or G4 games), an online game service provider is required to obtain (i) a license (for G1 games in general, as G1 games allow many users to jointly play the online game, the regulation is stricter than the other classified games) or a certificate of registration (for G2, G3 or G4 games in general) for provision of game services; and (ii) a decision on approval of a game's scripts/contents (for each G1 game) or a notification for provision of game services (for each G2, G3 or G4 game).

The Draft Decree reduces the paperwork for this industry by consolidating procedures (i) and (ii) into one. Accordingly, online game service providers will need to apply for a license (for each G1 game) or a certificate (for each G2, G3 or G4 game) for the release of each game. The validity term of the license/certificate will not exceed 5 years.

5. Introduction new rules on data center services⁸

Given the fact that the number of data center service providers are increasing, which might cause some data leakage concerns, it is necessary to provide a set of detailed regulations to control these services. As such, the Draft Decree introduces definitions for data center services, including: server rental services, space rental services at a data center, data storage space rental services and cloud computing services; and it also provides the relevant conditions, requirements and procedures for a business entity to conduct business registration for provision of such data center services. Notably, the service providers must, among others, conduct online registration with the MIC for service provision at MIC's official website, not transfer customers data overseas

⁷ Articles 1.40 - 1.50 of Draft Decree

⁸ Article 1.71 of Draft Decree

and must retain their data for five years upon cessation of service. In addition, for business entities who wish to engage in cross-border data center services, a notification procedure with the MIC shall be required as well. Given the unclear language of the relevant provisions under the Draft Decree, one might opine that these regulations only should be applicable to service providers established and operating in Vietnam, and foreign entities engaging in data service business (for reasons of practicality) should be subject to the same control method as stated in Section 2 above. On the other hand, others might interpret that such provisions also shall govern foreign entities engaging in data service business (e.g., OneDrive, Google Drive or Dropbox) due to the broad definition of 'data center service provider'. If the latter thinking prevails, it would have a great impact on all foreign entities providing data center services to customers in Vietnam. This is particularly the case because it is unclear as to how such foreign entities might comply with the relevant conditions, requirements and procedures, especially the regulations requiring service providers not to transfer customer data overseas (as mentioned above). As this example illustrates, in practice there will be various complicated issues with respect to the protection of customer data, especially cross-border data. Therefore, the Government's further clarification and guidance in this regard will be necessary.

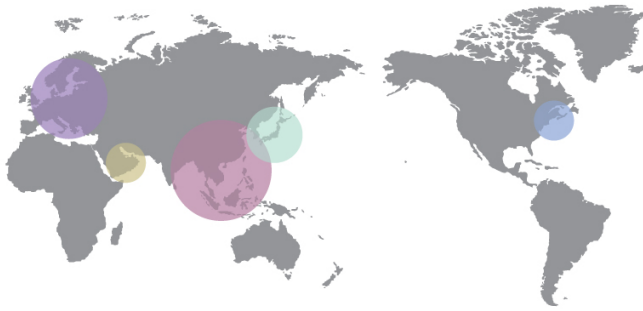
Should you want to know more about this Draft Decree, please contact us.

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