

The Latest Draft Cybersecurity Sanction Decree: Unveiling Vietnam's ambition to strictly enforce newly issued personal data protection regulations

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1. Introduction

Over the past few years, Vietnamese authorities have been diligently developing an all-encompassing legal framework to effectively govern cyberspace-related activities and the emerging issues within Vietnam's cybersecurity domain, in particular, those related to personal data protection. Notably, such efforts include the 2018 Law on Cybersecurity and its guiding legislation (i.e., Decree No. 53/2022/ND-CP dated 15 August 2022), and the country's first comprehensive legislation on personal data protection (i.e., Decree No. 13/2023/ND-CP dated 17 April 2023 "**Decree 13**"). Unfortunately, the final piece of this "puzzle" that stipulates sanctions against non-compliance with those regulations has yet to materialize, hindering authorities' bold goal of tightening cybersecurity in Vietnam.

In an attempt to complete this important framework, early this month (i.e., 2 May 2024), after several rounds of revision (ongoing since 2021), the latest version of the draft decree on sanctions for administrative violations in the field of cybersecurity, including personal data protection, ("**Draft Decree**") has been publicly available.¹ It seems that this Draft Decree is moving towards the final stages for official enactment by the Government of Vietnam.

This newsletter will breakdown some of the Draft Decree's notable provisions and their potential implications for businesses engaging in personal data processing in Vietnam.

2. Some notable regulations

(1) Expected effective date

The drafter of the Draft Decree (i.e., the Ministry of Public Security of Vietnam – "**MPS**") proposed an effective date of **1 June 2024** with no grace period.² However, there are doubts about the feasibility of this proposed date due to certain Draft Decree points' need for improvement (noted in Section 3 below). As such, we expect a slight reschedule of the official decree's effective date.

¹ Please see (in Vietnamese): <https://moj.gov.vn/qt/tintuc/Pages/chi-dao-dieu-hanh.aspx?ItemID=4271>

² Draft Decree, Article 49.

(2) Severe sanctions to be imposed on certain violations of personal data protection regulations

The Draft Decree provides for the imposition of severe fines in the case of certain personal data protection regulation violations, regardless of a challenge about the legality and severity of such proposed fines from many commenters. The severity of such fines will increase depending on the repetitiveness of the violation and the number of Vietnam citizens impacted. In particular:³

- A fine of up to **5% of the total revenue** of the immediately preceding fiscal year in Vietnam shall be imposed for (i) each repetition of data protection regulation violation in advertising, (ii) each repetition of illegal collection, transfer, or purchase of personal data, and (iii) non-compliance with personal data processing impact assessment or outbound transfer of personal data impact assessment requirements (including late submission of such assessments to the competent authority) related to data loss or leak affecting five million Vietnamese citizens or more.
- For the violations prescribed in item (iii) above, if the violation results in data loss or leak of one million to less than five million Vietnamese citizens, a fine of up to **VND 500,000,000** shall be imposed; and if the violation results in data loss or leak of 100,000 to less than one million Vietnamese, a fine of up to **VND 200,000,000** shall be imposed.⁴

It appears that the fines above are applicable to individual violators and doubled in the case of organizational violators.⁵ If that is the case, the maximum fine that businesses may incur due to a violation of relevant laws on personal data protection may be up to **10% of the total revenue** of the immediately preceding fiscal year in Vietnam. This threshold is high compared to that of other jurisdictions in Asia.

(3) Possible imposition of sanctions on violations committed before the effective date

Under the transition clause of the Draft Decree, this decree (if issued) shall not be applicable to violations that occur before but are detected or being handled after its effective date, unless this decree provides no legal liability or offers more favorable treatment against such violations. Accordingly, the decrees on administrative sanctions that are effective at the time of committing the violation shall apply. Based on the above provision, it is relatively clear that this decree shall not apply to violations committed and ended before its effective date even if the relevant fines or more serious ones are stipulated in the decree.

On the other hand, the Draft Decree is vague with concern to its potential imposition on violations committed before the effective date that continue afterwards. As such, the application of this decree on such violations may be subject to the enforcement authority's interpretation in practice, the possibility of which is likely high as the violation would be on-going during the effective period of the decree. Given that many non-compliance events under the current regulations, i.e., Decree 13, currently go unsanctioned (e.g., failure to submit a personal data processing impact assessment or overseas transfer of personal data impact assessment), businesses should promptly fix such non-compliance before the official enactment of this decree to avoid the

³ Draft Decree, Articles 22, 23, 25, and 26.

⁴ Draft Decree, Articles 25.2 and 25.3.

⁵ Draft Decree, Article 5.1.

potential imposition of the severe fines noted above.

3. Some incompleteness

As noted above, although this Draft Decree is reaching the final stages for official issuance, certain potential conflicts between its provisions and the provisions in the substantive laws remain. For instance:

- *Deadline for compliance with certain right-exercising requests of data subjects:* Under Decree 13, the statutory time-limit for deleting, providing, or restricting the processing of personal data upon the data subject's request is **72 hours**.⁶ This means that no violation is constituted as long as the request is fulfilled within such timeframe. However, under Articles 14.1.(e), 14.1.(h) and 14.2 of the Draft Decree, the act of not deleting/providing the personal data or restricting the processing of personal data within **48 hours** (excluding days off, holidays, Lunar New Year's days) upon the data subject's request shall be deemed an administrative violation and subject to relevant sanctions. The above regulations are in conflict with relevant regulations under Decree 13 and require improvement.
- *Conditions for storing personal data:* Under Decree 13, it is generally permissible to store personal data with valid data subject consent or other legal bases as stipulated by law. However, under Article 20.1.(b) of the Draft Decree, the act of storing personal data without having **a contract or a document of the competent authority** regarding functions and tasks suitable for storing personal data shall be deemed a violation and subject to corresponding sanctions. This regulation seems to be in contradiction with Decree 13 and needs to be revisited.

4. Conclusion

The latest version of the Draft Decree, outlining a comprehensive framework for penalizing non-compliance with established cybersecurity and personal data protection regulations, marks a significant step forward in Vietnamese authorities' attempt to establish a cohesive and robust legal enforcement framework in the field of cybersecurity, and in particular, personal data protection. Nevertheless, the Draft Decree appears to be immature with seemingly conflicting provisions and should undergo thorough review and revision before the official issuance, possibly resulting in a delay in its expected effective date (i.e., 1 June 2024).

In the meanwhile, all businesses involved in personal data protection in Vietnam are strongly advised to diligently review their cybersecurity measures and data protection policies to ensure compliance with the applicable regulations. By doing so, organizations can stay ahead and proactively avoid the repercussions of administrative penalties for non-compliance, especially after the effective date of the official decree.

For further details on how this Draft Decree may affect your operations and how to stay compliant, please do not hesitate to contact us. Our team of legal experts is ready to provide you with the guidance and support needed to effectively navigate through the complexities of Vietnam's cybersecurity and data protection laws.

⁶ Decree 13, Articles 9.6, 14.3 and 16.5.



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