

Vietnam: Navigating the Official Data Law

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Introduction

The promulgation of the Law on Data (“**Data Law**”) was exceptionally swift. The first draft of the Data Law was released for public comment on June 28, 2024,¹ and subsequently approved by the National Assembly on November 30, 2024, a period of less than six months. This rapid legislative process underscores the significance of the Data Law, making it a landmark piece of legislation in the country’s general digital data protection and governance landscape as well as setting the stage for a more secure and transparent digital government, digital society, and digital economy in Vietnam, which generates considerable interest among legal and business professionals both within and outside the country. However, the fast-track procedure resulted in the Data Law containing numerous generalized or vague regulations and principles, and the Vietnamese government and the Prime Minister will issue further guidance and clarification on such issues.

As a follow-up to the newsletter on the fifth draft version of the Data Law (“**Fifth Draft**”),² in this newsletter, we explore the official Data Law and highlight key considerations for businesses operating in and outside of Vietnam.

1. Scope of application

The Data Law governs a broad spectrum of matters relating to digital data, including the development, protection, administration, processing, and use of digital data, the National Data Center (“**NDC**”), the National General Database (“**NDG**”), digital data products and services, state management of digital data, and the rights, obligations, and responsibilities of agencies, organizations, and individuals related to digital data activities.³

The official Data Law departs from the broader scope of “data” under the Fifth Draft, instead focusing specifically on “digital data” and related matters. “Digital data” is defined as data about things, phenomena, and events, including one or a combination of sounds, images, digits, writing, and symbols expressed in digital form (hereinafter “**data**”).⁴ While the Data Law lacks a specific definition of the “digital form” of data, data is collected or created from direct generation, digitalization of data originally existing in tangible formats and other physical

¹ [Dự thảo Luật Dữ liệu](#)

² Please see our newsletter discussing the Fifth Draft here: [Draft Law on Data \(fifth version\): A new chapter for Vietnam’s legal landscape on data | N&A Newsletters | Knowledge | Nishimura & Asahi](#)

³ Data Law, Article 1

⁴ Data Law, Article 3.1

forms.⁵ Within the context of the current technologically-centric world, data is likely created or retained by almost all corporations; as such, a significant number of corporations (including offshore ones) will possibly be governed subject to the Data Law.⁶

2. Governed Subjects

The Data Law applies to the following entities: (i) Vietnamese agencies, organizations, and individuals, (ii) foreign agencies, organizations, and individuals based in Vietnam; and (iii) offshore agencies, organizations, and individuals that directly engage in or are related to digital data activities in Vietnam.⁷

Similar to the Fifth Draft, the scope of the entities subject to the Data Law is extensive, capturing offshore agencies, organizations, and individuals who provide cross-border online services in Vietnam (without having a commercial presence in Vietnam) if they directly engage in or relate to digital data activities in Vietnam. While the law governs offshore agencies, organizations, and individuals related to digital data activities in Vietnam, it contains neither a definition of “digital data activities” nor any criteria by which to determine whether and how a relevant offshore agency, organization, or individual is deemed “related to” digital data activities in Vietnam. As a result, any minor relationship between an offshore entity and a digital data activity in Vietnam may render the entity subject to the Data Law.

This is not the first time Vietnamese lawmakers have chosen to adopt a broad approach, as the draft Law on Personal Data Protection as well as Decree No. 13/2023/ND-CP of the Vietnamese government dated 17 April 2023 on personal data protection demonstrated a similar trend.⁸ It appears that, from a legislative drafting standpoint, it might be challenging for lawmakers to precisely predict the specific activities that are “related to” digital data activities in Vietnam, and therefore, a broad yet ambiguous regulation was used to accommodate future possibilities. Since the law is vague, the authorities might also have the right to interpret the terminology on a case-by-case basis.

3. Key data-related entities recognized and regulated by the Data Law

The Data Law recognizes and regulates the following key data-related entities:

- (i) Data subject: an individual or organization to whom/which data pertains.⁹
- (ii) Data owner: an agency, organization, or individual that/who has the right to decide upon the development, protection, administration, processing, and use of, and the exchange of value for, the data they own.¹⁰
- (iii) Data administrator: an agency, organization, or individual that/who engages in the development,

⁵ Data Law, Article 11.1

⁶ Data Law, Article 2

⁷ Data Law, Article 2

⁸ Draft Law on Personal Data Protection, Article 1; Decree 13, Article 1

⁹ Data Law, Article 3.12

¹⁰ Data Law, Article 3.14

management, operation, and exploitation of data at the request of a data owner.¹¹

- (iv) Data user: Although this group of entities is still governed by the Data Law, compared to the Fifth Draft, the definition of this group has been removed. Based on the relevant regulations, a data user can be interpreted as an agency, organization, or individual using the data as shared by a data owner or a data administrator.¹²

Notably, since the Data Law covers both personal data and non-personal data, “data subject” refers to not only an individual but also an organization. As the term can have different meanings depending on the context, this might cause confusion among businesses as well as legal practitioners if they are new to the data privacy area. As such, we recommend paying close attention to the context in which the data subject is mentioned.

4. Types of data regulated by the Data Law

As stated above, “digital data” is defined as data about things, phenomena, and events, including one or a combination of sounds, images, digits, writing, and symbols expressed in digital form.¹³ This definition seems to broadly capture all contemporary types of data, as long as the data is expressed in digital form. The Data Law further classifies data into the following categories:¹⁴

- (i) Classification by the type of data being transmitted, including: (a) shared data, (b) private data, and (c) open data.
- (ii) Classification by the materiality of the data content, including: (a) **core data**, (b) **important data**, and (c) other data. The criteria for determination of core data and important data shall be prescribed by the Vietnamese government.¹⁵ Please also refer to **Item 6** below for the relevant compulsory obligations imposed by the Data Law when processing core data and important data.
- (iii) Classification by other criteria satisfying the requirements for administration, processing, and protection of data as decided by the data administrator.

5. Types of governed data processing activities

Under the Data Law, Data processing is defined as the process of receiving, converting, and organizing data and other related activities to serve the activities of agencies, organizations, and individuals.¹⁶ This definition, being generally formulated, can cover a broad spectrum of specific data processing activities prescribed under the Data Law (e.g., publicizing, analyzing and synthesizing, accessing, and confirming data). The Data Law also provides definitions for a number of data processing activities, including data encrypting,¹⁷ decrypting,¹⁸

¹¹ Data Law, Article 3.13

¹² Data Law, Article 17

¹³ Data Law, Article 3.1

¹⁴ Data Law, Article 13.1

¹⁵ Data Law, Article 13.3

¹⁶ Data Law, Article 3.8

¹⁷ Data Law, Article 3.16

¹⁸ Data Law, Article 3.17

coordinating,¹⁹ administering,²⁰ and managing,²¹ while it has removed numerous definitions for specific data processing activities when compared to the Fifth Draft. It remains to be seen whether any other specific data processing activities will be prescribed in the Decree guiding the Data Law to be issued by the Vietnamese government.

6. Major compulsory obligations related to the processing of core data and important data

In the case of processing core data and important data, the Data Law imposes the following major obligations:

- (i) Compulsory classification of data. Entities other than state agencies which are data owners and/or data administrators must classify **core data**,²² **important data**,²³ and **other data** by the materiality of the data.²⁴ This is a major change in the Data Law when compared to the Fifth Draft, where the statutory classification of data is optional for non-state entities (such as enterprises).²⁵ Further details of the criteria for determination of these types of data will be provided by the Vietnamese government.
- (ii) Compulsory implementation and use of data protection measures. A data owner or a data administrator that manages, stores, or processes core data and important data must implement data protection measures throughout the entire data processing process, including (i) development and implementation of data protection policies and regulations, (ii) management of data processing activities, (iii) development and implementation of technical solutions, (iv) training, fostering, developing, and managing human resources, and (v) other data protection measures required by law.²⁶ Additional details will be provided in guidance from the Vietnamese government.
- (iii) Periodic risk assessments of data processing. The Data Law classifies risks arising from data processing into the following categories: privacy risks, cybersecurity risks, risks arising from identification and access management, and other types of data processing risks.²⁷ Data administrators that manage core data or important data must perform periodic risk assessments of relevant data processing activities in accordance with the law and notify the specialized units in charge of cyber security and information security under the Ministry of Public Security, the Ministry of National Defense, and the relevant agencies, for the purposes of coordinating the protection of data safety and security.²⁸ These risk assessment and notification obligations will be detailed in a decree guiding the Data Law to be issued by the Vietnamese government.

¹⁹ Data Law, Article 3.18

²⁰ Data Law, Article 15.1

²¹ Data Law, Article 15.2

²² Per Article 3.7 of the Data Law, *core data* is important data that directly affects national defense, security, foreign relations, macro-economy, social stability, public health, and safety, on the list issued by the Prime Minister.

²³ Per Article 3.6 of the Data Law, *important data* is data that that may affect national defense, security, foreign relations, macro-economy, social stability, public health, and safety, on the list issued by the Prime Minister.

²⁴ Data Law, Article 13.2

²⁵ Fifth Draft, Article 12.4

²⁶ Data Law, Articles 14.2, 27.1, and 27.3

²⁷ Data Law, Article 25.1

²⁸ Data Law, Article 25.4

- (iv) Potential administrative requirements applicable to cross-border transfer and processing of data. Cross-border transfers and processing of **core data or important data** include the following cases: (i) transfers of data stored in Vietnam to data storage systems located outside the territory of Vietnam, (ii) Vietnamese agencies, organizations, and individuals transferring data to offshore organizations and individuals, and (iii) Vietnamese agencies, organizations, and individuals using offshore platforms for data processing.²⁹ The transfer and processing of data (including as specified above) must ensure national defense, security, and the protection of national interests, public interests, and the rights and legitimate interests of data subjects and data owners in accordance with the laws of Vietnam and international treaties to which Vietnam is a party.³⁰ Additional details will be provided in guidance from the Vietnamese government.

Organizations and individuals must adhere to the statutory obligations above introduced by the Data Law if they qualify as data owners and/or data administrators. However, these regulations do not appear to be practically enforceable until the issuance of legislative documents offering guidance on the determination, protection measures, and regular risk assessment of **core data and important data** under the Data Law.

For instance, in relation to data classification, enterprises might be uncertain as to how to classify data as core data or important data. There also are some uncertainties in regard to data protection measures, including, for example: (i) the mandatory contents of the data protection policies and regulations, (ii) the standards applicable to technical solutions, and (iii) how the training should be conducted.

Furthermore, in relation to cross-border transfers of data, during the process of promulgation of the Data Law, we observed that earlier draft versions of the Data Law contained relatively detailed and stringent provisions, some of which were highly controversial.³¹ Perhaps, in order to ensure the promulgation of the Data Law by the National Assembly in November 2024, lawmakers may have removed those provisions from the final Data Law and assigned the Vietnamese government to provide detailed guidance later. Under the Fifth Draft, there were numerous requirements applicable to cross-border transfers and processing of data, notably including (i) that data transfers were subject to an impact assessment and the approval of the competent authority, and (ii) execution of a data transfer agreement is required. Given the circumstances explained above, even though the text of the official Data Law does not contain any administrative requirements applicable to cross-border transfers and/or processing of data, it is possible that future decrees guiding the Data Law will reintroduce those conditions and licensing procedures, if the intent of the lawmakers remains unchanged.

7. Data-related products and services

- (i) Organizations providing data intermediary products and services³² must be registered for operation, and

²⁹ Data Law, Article 23.2

³⁰ Data Law, Article 23.3

³¹ Please see more at our newsletter here: [Draft Law on Data \(fifth version\): A new chapter for Vietnam's legal landscape on data | N&A Newsletters | Knowledge | Nishimura & Asahi](#)

³² Per Article 40.1 of the Data Law, *data intermediary products and services* are products and services that aim to establish a commercial relationship between the data subject, the data owner, and the user of the product or service, through an agreement for the purpose of exchanging, sharing, and accessing data, and exercising of the rights of the data subject, data owners, and data users.

- managed in accordance with the laws on investment, except in the case of providing data intermediary products and services internally (i.e., within an organization).³³
- (ii) Organizations providing data analysis and synthesis products and services³⁴ that may endanger national defense and security, social order and safety, social ethics, and public health must register their operation and must be managed in accordance with the laws on investment.³⁵ In the case of connecting to and sharing information with national databases and specialized databases for trading, data analysis and synthesis products and services must be managed in accordance with the law.³⁶
 - (iii) Providers of the products and services above must comply with some compulsory obligations,³⁷ such as entering into a service provision contract with customers; regularly managing, inspecting, and monitoring data safety and security; preventing, stopping, and handling data risks; and monitoring behavior that may affect data protection.

Additional details of the regulations above will be provided by the Vietnamese government.

As discussed in **Item 6** above concerning the cross-border transfer of data, the Fifth Draft contains numerous requirements on the conditions and licenses required for an organization to provide data intermediary products and services, and data analysis and synthesis products and services, which include, among other things, a license from the Ministry of Public Security.³⁸ If the Vietnamese government follows the same route as the draft Data Law, it is likely that the forthcoming decrees guiding the Data Law will once again prescribe those conditions and licensing procedures applicable to the provision of data intermediary products and services, and data analysis and synthesis products and services.

Furthermore, given the general and vague definitions of (i) trading of data intermediate products and services and (ii) trading of data analysis and synthesis products and services, many companies (subject to their actual operation), may be regarded as providers of the data related products and services mentioned above, and thus, subject to statutory licenses.

8. Recognition of rights over data as property

A “data owner” is defined as an agency, organization, or individual who has the right to make decisions regarding the development, protection, administration, processing (which includes receiving, converting, and organizing data, and other data-related activities to serve the activities of agencies, organizations and individuals),³⁹ uses,

³³ Data Law, Article 40.2

³⁴ Per Article 41.1 of the Data Law, *data analysis and synthesis products* are the result of the process of analyzing and synthesizing data into useful insights at different levels at the request of the product user. *Data analysis and synthesis services* are activities of analyzing and synthesizing data at the request of the service user.

³⁵ Data Law, Article 41.2

³⁶ Data Law, Article 41.2

³⁷ Data Law, Article 43

³⁸ Please see more at our newsletter here: [Draft Law on Data \(fifth version\): A new chapter for Vietnam's legal landscape on data | N&A Newsletters | Knowledge | Nishimura & Asahi](#)

³⁹ Data Law, Article 3.8

and exchanges for the value of the data it owns.⁴⁰ The “right over data of a data owner” is a property right in accordance with civil laws.⁴¹ Pursuant to Vietnamese civil law, a “property right” is a type of property, and “ownership rights” comprise the rights to possess, use, and dispose of property of the owner.⁴²

Furthermore, the Data Law also provides general regulations on data trading and data trading floors, (further details of which shall be provided by the Vietnamese government). Accordingly, certain types of data can be traded via data trading floors in accordance with Vietnamese government’s regulations.⁴³

Although the current provisions of the Data Law may not provide absolute clarity and detailed procedures for data trading, the Data Law provides a basis to facilitate data trading business, which was uncertain and challenging before the enactment of the Data Law. As a result of the Data Law, it is possible for organizations and individuals to engage in data-related transactions.

Notwithstanding, as data is not a normal asset that can be freely transferred, and is unique and governed by stringent legal regulations, data trading may be subject to limitations imposed by other applicable laws and regulations (e.g., a data owner may be unable to transfer its data rights to another entity if the data subject has not consented thereto). Thus, the potential scope and limitations of these rights should be examined carefully.

9. Compulsory provision of data to state agencies

Under the Data Law, organizations and individuals are compelled to provide data to state agencies upon request, even without the consent of the data subjects, in the following situations: (i) responding to emergencies, (ii) when there is a risk of a threat to national security that does not reach the level required for declaration of a state of emergency, (iii) disasters, and (iv) prevention of and combatting riots and terrorism (collectively, **“Compulsory Disclosure Situations”**). A state agency that receives data provided by organizations and individuals in Compulsory Disclosure Situations has the following responsibilities: (i) to use the data in line with the requested purposes, (ii) to ensure data security and safety, and to protect the data and the lawful interests of data subjects and the organizations and individuals that provided the data in accordance with the law, (iii) to destroy the data as soon as it is no longer necessary for the requested purposes, and to notify the data subject, organization, or individual providing such data, and (iv) to provide notice of the storage and use of data at the request of the organizations and individuals providing the data, except in situations involving protection of state secrets and working secrets.⁴⁴

The Data Law is ambiguous in regard to whether a state agency might have the right to require organizations and individuals to provide data without the consent of the data subject. This general requirement creates many uncertainties, such as:

⁴⁰ Data Law, Article 3.14

⁴¹ Data Law, Article 3.15

⁴² Civil Code No. 91/2015/QH13 of the National Assembly dated November 24, 2015, Articles 105.1 and 158

⁴³ Data Law, Article 42

⁴⁴ Data Law, Article 18.3

- (i) Is a statutory request form required?
- (ii) Which authority is permitted to make such a request?
- (iii) How should Compulsory Disclosing Cases be determined?
- (iv) What are the procedures for an authority to make such a request?
- (v) What is the scope of data to be provided?

Based on the matters above, we believe this provision is likely unenforceable until the Vietnamese government provides more detailed guidance. Thus, at this stage, based purely on the current text of the Data Law, we are unable to opine on whether Vietnam has a strict requirement on government access to data, as it largely depends on how the Vietnamese government will implement this general regulation. If the Vietnamese government interprets these regulations in an arbitrary manner, there is a risk that the data of companies and individuals might be exposed to the authorities at any time.

10. NGD

- (i) Types of data stored in the NGD. The NGD, a database developed and managed by the Vietnamese government through the NDC, comprises the following types of data:⁴⁵
 - (a) Open data;
 - (b) Shared data of state agencies;
 - (c) Data exclusively used by state agencies under the Prime Minister's decision to serve the tasks of national defense, security, external relations, cipher, socio-economic development, digital transformation, national interests, and public interests;
 - (d) Data of Party agencies, the Vietnam Fatherland Front Committees, and socio-political organizations (with the consent of the data owner); and
 - (e) Other types of data provided by organizations and individuals.
- (ii) Exploitation and use of data stored in the NGD. Organizations and individuals are allowed to exploit and use data in the NGD as follows:⁴⁶
 - (a) Freely exploiting and using open data;
 - (b) Exploiting and using personal data if consented by the NDC and the individual whose personal data is exploited and used;
 - (c) Exploiting and using other types of data if consented by the NDC.

Conclusion

The Data Law, taking effect on July 1, 2025, with no grace period, represents a major advancement in Vietnam's initiative to enhance data protection and privacy regulations, while also promoting the development of its digital economy.

To sum up, under the official Data Law, many key aspects remain unspecified and will require further guidance from the Vietnamese government and the Prime Minister. Notably, the Ministry of Public Security has recently released, for public consultation, three draft Decrees detailing a broad spectrum of regulations under the Data

⁴⁵ Data Law, Articles 33 and 34.1

⁴⁶ Data Law, Article 35.3(c)

Law, including, without limitation, compulsory provision of data to state agencies, requirements and procedures for cross-border data transfers and processing, criteria for determination of core data and important data, details about data processing activities, national data development fund, and data-related products and services. Public consultation will be open until March 17, 2025.⁴⁷

Accordingly, we recommend that businesses pay close attention to the relevant guiding documents in order to prepare for compliance with the forthcoming requirements and/or contribute comments to help shape the legal documents. In this regard, upon being entrusted by you, we will help deliver analyses and impact assessment reports of significant regulations on businesses to the relevant competent authorities.

As our firm is committed to supporting businesses through this dynamic period, please feel free to reach out to our team of lawyers specializing in data protection and technology if you have any questions or need any assistance.

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⁴⁷ Draft Decree detailing articles and implementation of the Data Law: <https://bocongan.gov.vn/pbgdpl/van-ban-du-thao/du-thao-nghi-dinh-guy-dinh-chi-tiet-va-bien-phap-thi-hanh-luat-du-lieu-516.html>

Draft Decree on the Data development fund: <https://bocongan.gov.vn/pbgdpl/van-ban-du-thao/du-thao-nghi-dinh-guy-dinh-ve-guy-phat-trien-du-lieu-quoc-gia-517.html#parentHorizontalTab1>

Draft Decree on scientific, technological, and innovation activities and data-related products and services: <https://bocongan.gov.vn/pbgdpl/van-ban-du-thao/du-thao-nghi-dinh-guy-dinh-hoat-dong-khoa-hoc-cong-nghe-doi-moi-sang-tao-va-san-pham-dich-vu-ve-du-lieu-515.html>