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Since its issuance (i.e., 12 June 2018), Vietnam's Cybersecurity Law (No. 24/2018/QH14) has provided for controversial data localization regulations that raise huge concerns from businesses (domestic and international), as the regulations can greatly impact their operations in Vietnam due to the ambiguity and vagueness. The law provides that domestic and foreign enterprises that provide services on telecommunications network, the Internet network, or value-added services on cyberspace in Vietnam and collect, exploit, analyze or process data on personal information, data on service users' relationships or data created by service users in Vietnam must locally store this data for a period set forth by the Government.¹ Further, it stipulates that foreign enterprises shall open a branch or representative office in Vietnam.²

Given the deficiency of official guidance, such regulations have been stagnant for a while, since the law came into effect (i.e., 1 January 2019). The Vietnamese Government, therefore, has worked very hard on creating a detailed guidance with the hope of bringing those regulations to life. After several rounds of drafting, on 15 August 2022, the Government finally issued an official guidance on these data localization requirements in its decree (No. 53/2022/ND-CP), which will take effect starting 1 October 2022 ("Decree 53"). In our observation, the management policy and approach in the official decree are relatively similar to those in the previous drafts that have been discussed many times in the media in the case of foreign enterprises engaging in service provisions on cyberspace in Vietnam, while it might be a little stricter in the case of domestic enterprises. As a result, this new enactment might surprise some domestic businesses. Below are some key takeaways:

1. Data subject to the data localization requirement

Decree 53 requires the following data, among others, must be stored locally ("**Subjected Data**"):³

Data on personal information ⁴ of service users in Vietnam ⁵	:	All types.
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¹ Cybersecurity Law, Article 26.3.

² Cybersecurity Law, Article 26.3.

³ Decree 53, Article 26.1.

⁴ Under Article 2.1 of Decree 53, "data on personal information" means information data in the forms of symbols, text, numbers, pictures, sounds or the like to determine the identify of an individual.

⁵ Under Article 2.3 of Decree 53, "service users in Vietnam" means organizations and individuals that use cyberspace in the territory of Vietnam.

Data created by service users in Vietnam ⁶	:	User account name; time log; credit card information; email address; the latest IP address that has been used to log-in and log-out; phone number that is used for registration and linked to account or data.
Data on service users' relationships ⁷	:	Friends or groups that users connect to or interact with.

2. Data localization requirements applicable to domestic enterprises

Domestic enterprises⁸ shall store the Subjected Data in Vietnam.⁹ Unlike the previous draft decree, by providing no further conditions in the official decree, the Government aims to cover and govern all domestic enterprises that fall within the description of Article 26.3 of the Cybersecurity Law. Since the official decree does not provide further regulations or guidance applicable to domestic enterprises, it is understood that these requirements applicable to domestic enterprises remain broad. Particularly, domestic enterprises, including foreign invested enterprises, that satisfy the two following conditions mentioned in the Cybersecurity Law shall store the Subjected Data in Vietnam:

- (i) providing one of the services, including services on telecommunications network,¹⁰ services on the internet network¹¹ and value-added services on cyberspace, in Vietnam;¹² and
- (ii) conducting one of the activities, including collecting, exploiting, analyzing and processing one of data, mentioned in the left column of **Item 1** above.

Once this official decree comes into effect, the domestic enterprises satisfying the two conditions above that are hiring only servers outside of Vietnam to provide their services to service users in Vietnam should find technical solutions to store the Subjected Data in Vietnam soon (e.g., storing a copy of the Subjected Data in a server in Vietnam in addition to the current servers located overseas.).

⁶ Under Article 2.5 of Decree 53, “data created by users in Vietnam” means information data in the forms of symbols, text, numbers, pictures, sounds or the like that reflects the service users’ participation in, activities on, use of cyberspace and information on devices and network services that are used to connect to the cyberspace in the territory of Vietnam.

⁷ Under Article 2.4 Decree 53, “data on service user’s relationship” means information data in the forms of symbols, text, numbers, pictures, sounds or the like that reflects or determines relationships between service users and other persons on cyberspace.

⁸ Under Article 2.11 of Decree 53, “domestic enterprises” means enterprises that are established or registered in accordance with the laws of Vietnam and have their head office in Vietnam.

⁹ Decree 53, Article 26.2.

¹⁰ Under Article 2.6 of Decree 53, “services on telecommunications network” means telecommunications services and telecommunications-based services in accordance with law.

¹¹ Under Article 2.7 of Decree 53, “services on Internet” means internet services and internet-based content services in accordance with law.

¹² Under Article 2.8 of Decree 53, “value added services on cyberspace” means value-added telecommunication services in accordance with law.

3. Data localization requirements applicable to foreign enterprises

Unlike domestic enterprises, Decree 53 provides further guidance to narrow down the scope of foreign enterprises¹³ that are subject to these data localizations to make the regulations more realistic in terms of governance of foreign enterprises. Accordingly, foreign enterprises must store the Subjected Data and open a branch or a representative office in Vietnam if they satisfy all the following conditions:¹⁴

- (i) Conducting business activities in Vietnam in one of the following fields: telecommunications; data sharing or storage on cyberspace; provision of national or international domain names to service users in Vietnam; e-commerce; online payment services; intermediary payment service; online transportation connection service; social network and communications; online games; services for provision, management or operation of other information on cyberspace in form of text messages, voice calls, video calls, emails and online games;
- (ii) the provided services above have been used to commit a violation of cybersecurity laws;
- (iii) the Police Department for Cybersecurity and Hi-tech Crime Prevention (A05) under the Ministry of Public Security (MPS) has informed the enterprises of such violation and requested for collaboration, prevention, investigation and handling such violation in writing; and
- (iv) the foreign enterprises have failed to comply with the requests of A05 or have prevented, restricted, invalidated or neutralized cyber security measures that the specialized forces for cyber security have applied.

If the above conditions are met, the MPS shall issue a decision requiring the enterprises to comply with these data localization requirements.¹⁵ Within 12 months from the date of the decision, the subjected enterprises must complete the data storage and opening of a local presence in Vietnam.¹⁶

A05 shall inform, guide, monitor and supervise the performance by the enterprises of such requirements.¹⁷ If the foreign enterprises are unable to comply with the requirements on cybersecurity due to force majeure events, the enterprises must inform A05 of the same within 03 business days for verification of the force majeure events. In such case, the enterprises must seek remedies within 30 business days.¹⁸

4. Form of data storage in Vietnam¹⁹

Decree 53 does not provide for a specific form of data storage and leaves this up to the enterprises. As a result, the enterprises may decide how to store the Subjected Data at its convenience and discretion.

¹³ Under Article 2.12 of Decree 53, "foreign enterprises" means enterprises that are established or registered in accordance with foreign laws.

¹⁴ Decree 53, Article 26.3(a).

¹⁵ Decree 53, Article 26.6(a).

¹⁶ Decree 53, Article 26.6(c).

¹⁷ Decree 53, Article 26.6(b).

¹⁸ Decree 53, Article 26.3(b).

¹⁹ Decree 53, Article 26.5.

5. Regulatory periods for local data storage and local presence²⁰

The regulatory period for local data storage above commences from the date the enterprises receive a request from the authority until the ending time as mentioned in the request, but no less than 24 months. The period for maintaining the local presence in Vietnam commences from the date the enterprises receive a request from the authority to the time the enterprises stop their operation in Vietnam, or the services have ceased to be provided in Vietnam.

6. Sanctions

Under Decree 53, any enterprise that fails to comply with these data localization requirements must be dealt with in accordance with the law, depending on the nature and severity of the non-compliance in question. The Vietnamese government also is drafting a decree to address administrative violations, which would impose a monetary fine of up to 5% of violators' revenue in Vietnam.²¹ Since the draft decree has not been finalized, the official sanctions applicable to any such non-compliance are unclear, which has left businesses to adopt a wait-and-see approach.

We think that the official decree remains vague to some extents (e.g., whether the data stored in Vietnam must be original or a copy and whether the periods are applicable to foreign enterprises only or domestic enterprises as well). As such, further guidance from the MPS might be expected in the near future.

Should you need further information about this new decree, please contact us.

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²⁰ Decree 53, Article 27.

²¹ This information was taken from the draft version published on the MPS's portal (accessed at [Văn bản dự thảo \(bocongan.gov.vn\)](#)).