

Vietnam: First Ministry of Public Security Explanatory Session on Data Localization

Asia & Data Protection Newsletter

January 6, 2023

Author:

[E-mail✉ Tomonobu Murata](#)

[E-mail✉ Nguyen Tuan Anh](#)

[E-mail✉ Nguyen Thi Thanh Ngoc](#)

On 22 December 2022, the Ministry of Public Security of Vietnam (the “**MPS**”) held the Dissemination Conference on Decree No. 53/2022/ND-CP guiding certain articles of the Law on Cybersecurity (“**Decree 53**”) moderated by the leaders of the Department of Cybersecurity and Hi-tech Crimes Prevention (“**A05**”) - a specialized cybersecurity force under the MPS. In the conference, A05 went through the contents of certain articles of Decree 53 critical to both domestic and foreign enterprises in complying with the new data localization rules. Below are key takeaways of interest.

1. Explanation of captured services

With the understanding that the relevant definitions of the captured services applicable to domestic enterprises are general, A05 referred the audience to the guidance under the laws and regulations on telecommunications and internet management and usage. For instances:

- To identify telecommunications-based services and value added services in cyberspace under Articles 2.6 and 2.8 of Decree 53, “telecommunications services” and “telecommunications applied services” under Articles 3.7 and 3.8 of Telecommunications Law No. 41/2009/QH12 and the classification of telecommunication services under Article 9 of Decree No. 25/2011/ND-CP should be referenced.
- To identify the internet-based services under Article 2.7 of Decree 53, the definition of “internet services” under Article 3.2 of Decree No. 72/2013/ND-CP, “cellular network content provision services” as defined in Article 2 of Circular No. 17/2016/TT-BTTTT, as amended by Circular No. 08/2017/TT-BTTTT, and internet content provision services (services specializing in creation of content products that operate on the Internet and connect to internet infrastructure to carry out the registration, cancelation and provision of content services to users) should be applied.

Although A05 tried to explain the scope of captured services, we think such explanation is still vague and, as a result, law practitioners still find it difficult to specify the governed services. In such circumstance, an official confirmation from A05 on a specific case is highly recommended.

2. Target data

A05 acknowledged that “personal data” is inconsistently regulated in Vietnam in various legal documents. Therefore, the proper approach for determining “personal data of service users” under the data localization requirements is to refer to the definition of “personal data” under the coming decree on personal data

protection. Although the decree is in draft form, A05 advised that “personal data” should be interpreted as follows:

- “Personal data” is information in the form of symbols, letters, numbers, images, sounds, or equivalences in electronic environment that is about a specific individual or helps to identify a specific individual, including basic personal data and sensitive personal data.
- “Information that helps to identify a specific individual” means the information created from activities of an individual and can identify a specific individual when it is combined with other data.

3. Captured domestic enterprises

A05 confirmed that the captured domestic enterprises include those legally established under the laws of Vietnam and headquartered in Vietnam regardless of their foreign ownership. More importantly, A05 further confirmed that branches or representative offices in Vietnam of foreign enterprises are not considered captured domestic enterprises. According to such confirmation, foreign enterprises doing business in Vietnam via their branches or representative offices should be relaxed until an official request of the MPS obligating them to comply with the data localization requirements.

4. Data storage method

Although the storage method can be decided by the subject enterprises, A05 suggested the following two methods:

- Real-time synchronization method. In this method, the enterprises will build a separate storage system to serve their operation in Vietnam.
- Periodical back-up method. Using this method, the enterprises actively back-up their data and store it in appropriate media in Vietnam (e.g., local servers, hard drives, flash drives and CDs) at least once every 7 days.

5. Data retention period

A05 clarified that the captured domestic enterprises must store the target data from the effective date of these data localizations until the end of its operation. However, per the enterprises’ request, MPS might consider setting a specific period for data storage that is no less than 24 months.

6. Possible transition period granted to domestic enterprises

One critical point we learned from the conference is that in its presentation material shown to the audience, A05 stated that there is a 12 month transition period for domestic enterprises since the effective date of Decree 53 (i.e., from 1 October 2022), although there is no official text under Decree 53. It seems that there will be relaxed treatment in practice granted by the MPS as a law enforcer to domestic enterprises in preparing for compliance with new data localization requirements.

In the closing remark, the Director of A05 opined that the current regulations might not fit everyone. Therefore, the governed entities might contact A05 for further guidance during their operation if there are practical difficulties. In case there are too many obstacles, the MPS might propose certain revisions to the current

regulations to the Government of Vietnam to create fair rules for all stakeholders as well as ensure the balance between economic development and national security.

Should you want to know more information about this topic, please contact us.

In order to respond to the business needs of our clients, we publish newsletters on a variety of timely topics. Back numbers can be found [here](#). If you would like to subscribe to the N&A Newsletter, please fill out [the N&A Newsletter subscription form](#).

This newsletter is the product of its authors and does not reflect the views or opinion of Nishimura & Asahi. In addition, this newsletter is not intended to create an attorney-client relationship or to be legal advice and should not be considered to be a substitute for legal advice. Individual legal and factual circumstances should be taken into consideration in consultation with professional counsel prior to taking any action related to the subject matter of this newsletter.

Public Relations Section, Nishimura & Asahi [E-mail](#) 