

# LEGAL NEWS

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**CONTENTS**

**Data Protection and Privacy Law: .....2**  
**Other sectors: .....6**  
Finance - Banking .....6  
Taxation .....6  
Trade .....6  
Labour .....7  
Health .....7  
Information - Communications .....8  
Culture - Sports - Tourism .....9  
Transport .....9  
Construction .....9  
Natural Resources - Environment .....10  
Land .....10  
Energy .....10  
Administration - Judiciary .....11  
Agriculture - Forestry - Fisheries .....11  
Enterprise .....12  
Miscellaneous .....12

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## Data Protection and Privacy Law:

### **New regulations on personal data protection in Vietnam**

On 17 April 2023, the Government issued the long-awaited Decree No.13/2023/ND-CP on Personal Data Protection (“**Decree 13**”). This Decree is the first-ever comprehensive legal document regulating personal data protection in Vietnam, which provides new requirements for collecting and processing personal data. Decree 13 will take effect on 1 July 2023. Below are some notable points from Decree 13.

#### 1. Scope of application

Decree 13 has an extra-territorial scope of application, which shall cover nearly all types of both Vietnam-based and foreign individuals and entities directly participating in or relating to data processing activities in Vietnam.

Given such an extensive scope of application, Decree 13 shall cover nearly all types of individuals/entities directly participating in or relating to the processing of personal data in Vietnam.



#### 2. Classification of personal data

Decree 13 has inherited from previous definitions of personal information provided in various legal documents, and developed a new and extended definition of personal data, as quoted below:

*“Personal data means information in the form of signs, letters, numbers, images, sounds or other similar forms on the electronic environment, which is attached to a particular individual or helps identify a particular individual.”*

In addition, Decree 13 has finally provided an ever specific definition of the term “information helps identify a particular individual”, which means information derived from an individual's activity which when combined with other stored data and information can identify a particular person.

In brief, personal data are classified by Decree 13 into two major groups:

- (a) “basic personal data”, which include, inter alia:
  - (i) Image of the individual;
  - (ii) Driver's license number, license plate number;
  - (iii) Marital status;
  - (iv) Information on family relationships (parents, children); and

- (v) Information about the individual's digital account; personal data reflecting activities, history of activities on cyberspace.

and

- (b) “sensitive personal data”, which include, inter alia:

- (i) Political views, religious views;
- (ii) Health status and private life recorded in the medical record, excluding blood type;
- (iii) Information related to racial or ethnic origin;
- (iv) Information about inherited or acquired genetic characteristics of the individual;
- (v) Information about the individual's physical attributes and biological characteristics;
- (vi) Information about an individual's sex life and sexual orientation; and
- (vii) Individual’s location data generated through location services.



### 3. Classification of processing entities

Decree 13 has introduced four new concepts of processing entities, which include:

- (a) Personal Data Controller meaning organizations or individuals who decide the purposes and means of processing personal data (“**Data Controller**”);
- (b) Personal Data Processor meaning an organization or individual that performs data processing on behalf of the Personal Data Controller, through a contract or agreement with the Personal Data Controller (“**Data Processor**”);
- (c) Personal Data Controller cum Processor meaning an organization or individual who simultaneously decides the purposes, means and directly processes personal data (“**Data Controller cum Processor**”); and
- (d) Third Party meaning an organization or individual other than the Data Subject, Data Controller, Data Processor, Data Controller cum Processor that is authorized to process personal data.

In which, stricter requirements are applied to the Data Controller and the Data Controller cum Processor.

### 4. Consent requirements

Decree 13 has specifically defined “consent” to be a clear, voluntary, and affirmative expression of the data subject’s permission to process personal data. In particular, the data subject’s consent must be made in writing, by voice, by ticking the consent checkbox, by

consent messages, by selecting consent technical settings, or by other methods that can express such consent.

The Data Subject's consent is only valid when he/she voluntarily and clearly knows: (a) The type of personal data to be processed; (b) Purpose of processing personal data; (c) Organizations and individuals are allowed to process personal data; and (d) Rights and obligations of Data Subjects.



Furthermore, such data subject's consent must also be expressed in a format that is printable and able to be copied in writing, including electronic or verifiable format.

On the other hand, Decree 13 also provides the following exceptions where the data subject's consent is not required for data processing:

- (a) In emergency where it is necessary to immediately process relevant personal data in order to protect the life and health of the data subject or others. The Data Controller, Data Processor, Data Controller cum Processor, Third Party are responsible for the burden of proof;
- (b) The disclosure of personal data in accordance with the laws;
- (c) The processing of data by competent state agencies in the event of emergency for national defense, security, social order and safety, major disasters or dangerous epidemics; when there is a risk of threatening security and national defense but not to the extent of declaring a state of emergency; to prevent and combat riots and terrorism, to prevent and combat crimes and violations of the law in accordance with the law;
- (d) To fulfill the contractual obligations of the data subject with relevant agencies, organizations and individuals as prescribed by law; and
- (e) To serve the activities of the State agencies in accordance with the specialized laws.

#### 5. Data Processing Impact Assessment

Decree 13 requires the Data Controller, Data Processor, and Data Controller cum Processor to formulate and store its own data processing assessment dossier ("Data Processing Dossier") in writing, which must always be available for inspection and assessment by the Ministry of Public Security ("MoPS"). Such Dossier shall be made according to a standard form provided in an Appendix attached to Decree 13 as from the time when processing personal data is processed.

Furthermore, an original copy of the Date Processing Dossier must be sent to the Department of Cybersecurity and Prevention of Crimes Using High Technologies directly managed by the MoPS (the "**Cybersecurity Department**") within 60 days from the date of processing.

The Data Controller, the Data Controller cum Processor, and the Data Processor shall update and supplement the Data Processing Dossier according to a standard form provided in an Appendix to Decree 13 when there is a change in the contents of the dossier already sent to the Cybersecurity Department.

6. Notification of personal data processing

Decree 13 requires the Data Controllers and the Data Controller cum Processors to notify the Data Subjects of their personal data processing, and the notice thereof must contain statutory contents, be made once prior to the personal data processing, and be expressed in a format that is printable and able to be copied in writing, including electronic or verifiable format.

7. Notification of personal data breach

Decree 13 requires individuals and organizations to notify the Cybersecurity Department upon detection of a violation of personal data regulations. Unlike the current regulations, which require a notification “within 5 days” in general and “within 24 hours” in e-commerce, Decree 13 sets a time limit of 72 hours for notification by the Data Controllers and the Data Controllers cum Processors of such violation. In case of notification after 72 hours, the reason for the late notice must be attached thereto.

8. Stricter requirements for cross-border data transfer

Decree 13 has introduced new requirements applied to cross-border data transfer, which has been an unregulated sector before its issuance. In particular, in case where the data is intended to be transferred outside of Vietnam, processing entities, including Third Party, that conduct a cross-border transfer of data are required to perform the following obligations:

- (a) Formulating an Overseas Data Transfer Impact Assessment dossier (“**Data Transfer Dossier**”) in a standard form. This dossier must be available at all times for the MoPS to inspect and assess;
- (b) Submitting 01 original copy of the Data Transfer Dossier to the Cybersecurity Department within 60 days from the date of processing, which shall evaluate and may request to complete if such Dossier is found incomplete and does not comply with the regulations;
- (c) Notifying the Cybersecurity Department of the data transfer and contact details of the organization or individual in charge thereof in writing after a successful transfer; and
- (d) Updating and supplementing such Data Transfer Dossier when there is a change in the contents of this dossier already sent to the Cybersecurity Department within 10 days from the date of request.

9. Appointment of Data Protection Staff

Sensitive data processing entities must designate unit and personnel for personal data protection and notify the Cybersecurity Department of that designation. In the case where a processing entity is an individual, the information on that individual shall be notified.

10. Personal Data Protection Agency

Decree 13 designates the Cybersecurity Department as a specialized Personal Data Protection Agency, which is responsible for assisting the MoPS in performing the State management on nation-wide data protection in Vietnam.

## **Other sectors:**

### **Finance - Banking**

- Decree No. 19/2023/ND-CP dated 28 April 2023, providing guidelines for the Law on Anti-Money Laundering.
- Decree No. 14/2023/ND-CP dated 20 April 2023, providing for the functions, tasks, powers and organizational structure of the Ministry of Finance.
- Resolution No. 59/NQ-CP dated 23 April 2023 of the Government, on solutions supporting and removing difficulties for borrowers to serve the needs of life and consumption.
- Decision No. 11/2023/QĐ-TTg dated 27 April 2023 of the Prime Minister, providing for the level of large-value transactions to be reported.
- Decision No. 2189/QĐ-UBND dated 13 April 2023 of the People's Committee of Hanoi, approving the Project "Effective management, use and exploitation of public assets of Hanoi City in the period of 2023-2025, with orientation for the period of 2026-2030".
- Circular No. 02/2023/TT-NHNN dated 23 April 2023 of the Governor of the State Bank of Vietnam, on restructure by credit institutions and foreign banks' branches of the debt repayment term and unchanged debt group in order to assist customers in difficulty;
- Circular No. 03/2023/TT-NHNN dated 23 April 2023 of the Governor of the State Bank of Vietnam, providing for suspension of the implementation of Clause 11, Article 4 of Circular No. 16/2021/TT-NHNN dated 10 November 2021 of the Governor of the State Bank of Vietnam, regulating the purchases and sales of corporate bonds by credit institutions and foreign banks' branches.

### **Taxation**

- Decree No. 12/2023/ND-CP dated 14 April 2023, on extension of the time-limit for payment of value-added tax, corporate income tax, personal income tax and land rental in 2023.
- Circular No. 19/2023/TT-BTC dated 3 April 2023 of the Minister of Finance, cancelling Circular No. 150/2010/TT-BTC, providing guidelines on the value-added tax and corporate income tax applicable to press agencies.

### **Trade**

- Decree No. 18/2023/ND-CP dated 28 April 2023 of the Government, amending Decree No.40/2018/ND-CP dated 12 March 2018 of the Government, on management of multi-level marketing activities.;
- Consolidated Document No. 09/VBHN-BCT dated 7 April 2023 of the Ministry of Industry and Trade, combining Decrees on management of business activities by the multi-level

method.

- Consolidated Document No. 08/VBHN-BCT dated 7 April 2023 of the Ministry of Industry and Trade, combining Decrees providing guidelines for Law on Protection of Consumers' Rights.
- Consolidation Document No. 07/VBHN-BCT dated 5 April 2023 of the Ministry of Industry and Trade, combining Decrees on inspection organization and operation of the Industry and Trade sector.
- Decision No. 09/2023/QD-TTg dated 12 April 2023 of the Prime Minister, providing for the order, procedures, authority, issuance and management of APEC business travel cards.
- Consolidated Document No. 10/VBHN-BCT dated 24 April 2023 of the Ministry of Industry and Trade, combining Circulars on supplementation to the detailed list according to HS codes of exported or imported goods specified in a number of Circulars of the Ministry of Industry and Trade.

## **Labour**

- Resolution No. 60/NQ-CP dated 24 April 2023 of the Government, approving the Agreement on Social Insurance between Vietnam and the Republic of Korea.
- Decision No. 436/QD-TTg dated 25 April 2023 of the Prime Minister, approving the Implementation Plan of the Agreement on Social Insurance between Vietnam and the Republic of Korea.
- Decision No. 538/QD-BHXH dated 4 April 2023 of Vietnam Social Security, amending administrative procedures under the authority of Vietnam Social Security;
- Decision No. 406/QD-LDTBXH dated 3 April 2023 of the Ministry of Labour, War Invalids and Social Affairs, publishing new or cancelled administrative procedures within the scope of the State management functions of the Ministry of Labour, War Invalids and Social Affairs.
- Circular No. 02/2023/TT-BLDTBXH dated 12 April 2023 of the Minister of Labour, War Invalids and Social Affairs, amending Article 1 of Circular No. 09/2022/TT-BLDTBXH dated 25 May 2022, providing guidelines for the content of diversity of livelihoods, development of poverty reduction models, and support to workers to work abroad under contracts under the National Target Program on Sustainable Poverty Reduction in the period of 2021-2025.
- Notice No. 1461/TB-BHXH dated 5 April 2023 of Ho Chi Minh City Social Security, on promulgating and amending the Process and Delivery Note under the one-stop shop mechanism of Ho Chi Minh City Social Security.

## **Health**

- Consolidation Document No. 03/VBHN-BYT dated 11 April 2023 of the Ministry of Health,

- combining Decrees on management of medical devices.
- Decision No. 426/QD-TTg dated 21 April 2023 of the Prime Minister, implementing Directive No. 17-CT/TW dated 21 October 2022 of the Secretariat of the Party Central Committee, on strengthening food security and safety assurance in the new situation.
- Decision No. 2149/QD-UBND dated 12 April 2023 of the People's Committee of Hanoi, publishing the List of administrative procedures within the scope of the State management functions of the Department of Health of Hanoi.
- Decision No. 966/QD-BGDĐT dated 4 April 2023 of the Minister of Education and Training, approving the first aid manual for common accidents and injuries in children and pupils.
- Decision No. 228/QD-QLD dated 3 April 2023 of the Minister of Health, on the promulgation of "Standard for connection between the National Pharmaceutical Database System and the National Information System on Management of prescriptions and sales of prescription drugs".
- Decision No. 1928/QD-BYT dated 21 April 2023 of the Ministry of Health, on the e-Government Architecture of the Ministry of Health, version 2.1.
- Circular No. 08/2023/TT-BYT dated 14 April 2023 of the Minister of Health, on cancellation of legal documents.
- Consolidation Document No. 04/VBHN-BYT dated 11 April 2023, combining Circulars providing for Good Manufacturing Practice of drugs and medicinal ingredients issued by the Minister of Health.
- Circular No. 07/2023/TT-BYT dated 4 April 2023 of the Minister of Health, providing guidelines for the procedure of and methods for HIV/AIDS epidemiological surveillance and surveillance of sexually transmitted diseases.
- Directive No. 11/CT-TTg dated 21 April 2023 of the Prime Minister, on strengthening urgent measures to prevent and control rabies.

### **Information - Communications**

- Decision No. 566/QD-BTTTT dated 6 April 2023 of the Minister of Information and Communications, on the Action Plan to implement the National Cybersecurity and Safety Strategy, proactively responding to challenges from cyberspace up to 2025, with an orientation to 2030.
- Decision No. 834/QD-BCT dated 4 April 2023 of the Minister of Industry and Trade, promulgating the Implementation Plan of Decision No. 06/QD-TTg dated 16 January 2022 of the Prime Minister of Government, approving the project on developing the application of population data, determining electronic identification and authentication for the national digital transformation in 2023.
- Circular No. 20/2023/TT-BTC dated 13 April 2023 of the Minister of Finance, providing for

the collection rate and mechanism on collection, payment, management and use of fees for maintaining the use of domain names and Internet addresses, registration fee for using national domain name “.vn” and registration fee for using Internet address (IP protocol numbers).

### **Culture - Sports - Tourism**

- Decision No. 1453/QD-UBND dated 14 April 2023 of the People's Committee of Ho Chi Minh City, publishing the list of administrative procedures in the field of Publishing, Printing and Distribution within the scope of management functions of the Department of Information and Communications of Ho Chi Minh City.
- Decision No. 839/QD-BVHTTDL dated 4 April 2023 of the Minister of Culture, Sports and Tourism, providing for the functions, tasks, powers and organizational structure of the Cultural Heritage Department.
- Circular No. 05/2023/TT-BVHTTDL dated 5 April 2023 of the Minister of Culture, Sports and Tourism, on criteria for movie classification and display of movie classification ratings and warnings.

### **Transport**

- Decision No. 506/QD-BGTVT dated 27 April 2023 of the Minister of Transport, publishing the List of Vietnam's inland container depots.
- Circular No. 04/2023/TT-BGTVT dated 17 April 2023 of the Minister of Transport, promulgating 03 national technical regulations on components and equipment of means of railway transport;
- Circular No. 05/2023/TT-BGTVT dated 27 April 2023 of the Minister of Transport, amending Circulars related to the fields of road transport, road transport support services, means of transport, and drivers.

### **Construction**

- Decree No. 15/2023/ND-CP dated 25 April 2023, providing for pilot contract awarding for construction and installation bidding packages of traffic projects under the Socio - Economic Recovery and Development Program.
- Decision No. 390/QD-TTg dated 14 April 2023 of the Prime Minister, on the establishment of a Council to assess and appraise the Planning for urban and rural systems in the period of 2021-2030, with an orientation to 2050.
- Decision No. 382/QD-BXD dated 11 April 2023 of the Ministry of Construction, on the Plan of rearrangement of the State-owned enterprises and enterprises with capital funded by the State budget, in which the Ministry of Construction represents the State as owner for the

period of 2022- 2025.

- Decision No. 384/QD-BXD dated 11 April 2023 of the Minister of Construction, on adjustment in Formulation plan of planning for urban and rural system for the period of 2021-2030, with an orientation to 2050.

### **Natural Resources - Environment**

- Resolution No. 48/NQ-CP dated 3 April 2023 of the Government, approving the Strategy for exploitation and sustainable use of natural resources and environmental protection of sea and islands up to 2030, with an orientation to 2050.
- Decision No. 1034/QD-BTNMT dated 26 April 2023 of the Minister of Natural Resources and Environment, supplementing Clause 8, Article 2 of Decision 3866/QD-BTNMT dated 30 December 2022 of the Minister of Natural Resources and Environment, regulating the functions, tasks, powers and organizational structure of the Center for Planning and Investigation of marine resources and environment in the Northern region directly under the Department of Seas and Islands of Vietnam.
- Decision No. 10/2023/QD-TTg dated 24 April 2023 of the Prime Minister, providing for the functions, tasks, powers and organizational structure of the General Department of Meteorology and Hydrology directly under the Ministry of Natural Resources and Environment.
- Decision No. 334/QD-TTg dated 1 April 2023 of the Prime Minister, approving the Strategy for geology, minerals and mining industry up to 2030, with an orientation to 2045.
- Decision No. 788/QD-BTNMT dated 3 April 2023 of the Minister of Natural Resources and Environment, providing for the functions, tasks, powers and organizational structure of the Legal Department.

### **Land**

- Decree No. 10/2023/ND-CP dated 3 April 2023, on amendments to some articles of Decrees providing guidelines for implementation of the Law on Land.
- Decision No. 07/2023/QD-UBND dated 21 April 2023 of the People's Committee of Hanoi, amending Article 1 of Decision No. 19/2019/QD-UBND dated 15 October 2019 of the People's Committee of Hanoi, on the authority to approve the starting price of land use right auction for land allocation with collection of land use levy or for land lease in Hanoi City.

### **Energy**

- Decision No. 1321/QD-UBND dated 7 April 2023 of the People's Committee of Ho Chi Minh City, publishing the List of administrative procedures in the field of electricity within the scope of management function of the Department of Industry and Trade of Ho Chi Minh City.

- Circular No. 10/2023/TT-BCT dated 21 April 2023 of the Minister of Industry and Trade, on amendments to Circular No. 21/2020/TT-BCT dated 9 September 2020 of the Minister of Industry and Trade, on order of and procedures for granting electricity activity licenses.
- Circular No. 09/2023/TT-BCT dated 21 April 2023 of the Minister of Industry and Trade, providing for implementation of electricity selling prices and Circular No. 25/2018/TT-BCT dated 12 September 2018 of the Minister of Industry and Trade, on amendments to some articles of Circular No. 16/2014/TT-BCT.

### **Administration - Judiciary**

- Decision No. 2444/QD-UBND dated 25 April 2023 of the People's Committee of Hanoi, approving the internal process of handling administrative procedures under the authority of the Management Board of Industrial Parks and Export Processing of Hanoi.
- Decision No. 528/QD-BTP dated 10 April 2023 of the Ministry of Justice, publishing amended administrative procedures in the field of civil status within the scope of management functions of the Ministry of Justice.
- Decision No. 1977/QD-UBND dated 4 April 2023, publishing the list of cancelled administrative procedures in the field of social protection under the authority of the People's Committee at district level in Hanoi City.
- Decision No. 506/QD-BTP dated 4 April 2023 of the Minister of Justice, on the implementation plan of the Vietnam Statistical Development Strategy for the period of 2021-2030, with an orientation to 2045.
- Circular No. 01/2023/TT-VPCP dated 5 April 2023 of the Government Office, providing for the contents and measures to be implemented in the digitization of dossiers, results of handling administrative procedures and implementation of administrative procedures in the electronic environment.

### **Agriculture - Forestry - Fisheries**

- Decision No. 1586/QD-BNN-TCCB dated 19 April 2023 of the Minister of Agriculture and Rural Development, providing for the functions, tasks, powers and organizational structure of the Forest Protection Department.
- Decision No. 1588/QD-BNN-TCCB dated 19 April 2023 by the Minister of Agriculture and Rural Development, providing for the functions, tasks, powers and organizational structure of the Department of Quality, Processing and Market Development.
- Decision No. 1589/QD-BNN-TCCB dated 19 April 2023 of the Minister of Agriculture and Rural Development, providing for the functions, tasks, powers and organizational structure of the Forest Department.
- Decision No. 2122/QD-UBND dated 12 April 2023 of the People's Committee of Hanoi,

approving and cancelling the Internal process of handling administrative procedures in the field of Agriculture and Rural Development within the scope of the State management functions of the Department of Agriculture and Rural Development of Hanoi.

- Decision No. 1443/QD-BNN-TL dated 11 April 2023 of the Minister of Agriculture and Rural Development, approving the internal process of handling administrative procedures in the field of Irrigation within the scope of management functions of the Ministry of Agriculture and Rural Development.
- Decision No. 1343/QD-BNN-VP dated 4 April 2023 of the Minister of Agriculture and Rural Development, publishing internal administrative procedures among the State administrative agencies within the scope of management functions of the Ministry of Agriculture and Rural Development.

### **Enterprise**

- Decree No. 16/2023/ND-CP dated 25 April 2023, on organization, management and operation of enterprises directly serving national defense and security and enterprises combining economy with national defense, security; amending the provisions at Point g, Clause 1, Article 23 of Decree No. 47/2021/ND-CP dated 1 April 2021, providing guidelines for the Law on Enterprises.
- Resolution No. 58/NQ-CP dated 21 April 2023 of the Government, on key policies and solutions supporting enterprises to proactively adapt, recover quickly and develop sustainably by 2025.
- Decision No. 345/QD-TTg dated 5 April 2023 of the Prime Minister, approving the Project "Improving the quality and efficiency of legal support for enterprises in the period of 2021-2030".
- Circular No. 02/2023/TT-BKHDT dated 18 April 2023 by the Minister of Planning and Investment, on amendments to Circular No. 01/2021/TT-BKHDT, providing guidelines for enterprise registration.

### **Miscellaneous**

- Decision No. 315/QD-BNV dated 25 April 2023 by the Minister of Home Affairs, approving the Charter of the Association of Non-Public Vocational Junior Colleges of Vietnam.

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