

# Vietnam's Decree on Personal Data Protection: *Is it About to be Finalised?*

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## Background

After the first issuance of the Draft Decree on Personal Data Protection (*the Draft DPDP*), the Ministry of Public Security published the second Draft DPDP (which is currently the latest version made available to the public) on 9 February 2021 for further public consultation. Despite specifically setting out 1 December 2021 as the effective date, the Draft DPDP is still under the process of drafting and the date of promulgation is still thus unclear.

## Latest developments of the Draft DPDP

On 7 February 2023, the Government of Vietnam issued Resolution No. 13/NQ-CP (**Resolution 13**) which:

- (a) approves the DPDP formulation dossier, including the Draft DPDP's content, and
- (b) seeks appraisal comments on the Draft DPDP from the Standing Committee of the Vietnam National Assembly.

However, we note that the latest version of the Draft DPDP mentioned in Resolution 13 is not publicly available.

In addition, Resolution 13 further specifies several exceptions to the processing of personal data without obtaining the consent of data subjects as follows:

- (a) The purpose of data processing is to protect the life and health of the data subject or others in emergency situations. In this case, data processors, data controllers, parties acting as both data controllers and processors, or relevant third parties have the burden of providing justification for such a purpose;
- (b) The disclosure of personal data is required by the laws of Vietnam;
- (c) The data processing is implemented by the competent state authorities:
  - (i) in emergency situations in respect of national defence and security, social order and safety, great disasters or dangerous epidemics;
  - (ii) when there is a threat to national defence and security, but not to the extent of declaring a state of emergency; or
  - (iii) to prevent and combat riots and terrorism, crimes, and law violations in accordance with the laws of Vietnam;
- (d) The purpose of data processing is to perform the contractual obligations of the data subjects with the relevant agencies, organisations, and/or individuals as required by the laws of Vietnam; or
- (e) The purpose of data processing is to serve the actions of state authorities as prescribed by the laws of Vietnam.

It is also notable that by introducing the terms "data processor", "data controller", and "parties controlling and processing personal data" in Resolution 13, it appears that the Government had delineated the rights and obligations of these entities in the latest Draft DPDP (similar to the GDPR approach). Notwithstanding, until the Draft DPDP is finalised and issued, these concepts referred to in Resolution 13 may or may not be adopted in the final version of the DPDP.

Following the issuance of Resolution 13, the National Assembly Committee on Security and National Defence held its fifth plenary meeting to examine the Draft DPDP as approved by the Government. In this meeting, it was proposed that the Draft DPDP would take effect as from 1 July 2023. Several delegates suggested that the DPDP should have another suitable timeline for implementation. Although no specific effectivity date of the Draft DPDP was publicly announced, the recent efforts of the National Assembly and the Government of Vietnam are strong indications that the DPDP will soon come into effect this year.

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