

DRAFT DECREE ON INTERNET SERVICES AND CYBER-INFORMATION

The management, provision and use of Internet services and cyber-information is currently regulated by Decree No. 72/2013/ND-CP dated 15 July 2013 of the Government, which has been supplemented and modified by Decree 27/2018/ND dated 1 March 2018 (*Decree 72*) and Circular 38/2016/TT-BTTTT dated 26 December 2016 of the Ministry of Information and Communications on the cross-border provision of public information (*Circular 38*).

Given the ever-increasing demand of Internet users and burgeoning establishment of websites and social networks over the past handful of years, the current regulatory framework provided by Decree 72 and Circular 38 appears to have certain legal ambiguities which necessitate further amendment and clarification.

On 6 July 2021 the Ministry of Information and Communications (*MIC*) released a draft decree to amend and supplement aspects of Decree 72 (*Draft Decree*). We discuss below key aspects of the Draft Decree.

Extension of “cyber-information” classification

The Draft Decree modifies the classification of “cyber-information” to also cover websites providing social network services, in augmentation to the five pre-existing categories under Decree 72 namely electronic newspapers, aggregated news websites, internal websites, personal websites and professional websites.

New regulations on cross border provision of cyber-information

Under Circular 38, any foreign entity that provides public information on a cross-border basis to at least one million users per month is required to notify the MIC of its contact point in Vietnam and comply with the MIC’s requirements in dealing with any illegal content. The new requirements that have been inserted into the Draft Decree are at a higher level as compared to the current legislation. In particular, under the Draft Decree, any foreign entity that provides public information to Vietnam on a cross-border basis and either (i) stores data in Vietnam or (ii) has at least 100,000 unique visitors (*UVs*) per month (*Cross-border Provider*) would be required to:

- i) notify the MIC of its identity, server location and contact point in Vietnam;
- ii) prevent, remove any illegal content and/or suspend any illegal service at the request of the MIC;
- iii) abide by any content agreement with any press agencies in Vietnam according to copyright regulations if such Cross-border Provider quotes or extracts any piece of news from the media in Vietnam;
- iv) store data and establish a branch or representative office in Vietnam in accordance with Article 26.3 of the Cyber-security Law;

According to the Cybersecurity Law, the requirements for local data residency and local presence apply to providers of telecommunications services, internet services and value-added services in Vietnam’s cyberspace that collect, analyse or process personal data, data about relationships of the service users, or data created by the service users in Vietnam. The implementing decree of the Cyber-security Law has not yet been issued. However, according to the latest draft implementing decree of the Cybersecurity Law, the local presence requirement applies to foreign providers which violates the law (e.g. it allows users to commit cyber-attacks, cybercrimes or other acts which disturb national security and public order, or it violates the Cybersecurity Law, such as obstructing cybersecurity policing or failing to verify users’ personal details, keep users’ personal information confidential, provide users’ information to the relevant authorities or remove illegal content on a timely basis.)

- v) maintain a specific department to handle any request of the Vietnamese regulators and settle any complaints from users in Vietnam;
- vi) respond to any complaint of users in Vietnam about illegal content within 24 hours of receiving such complaint, and remove the illegal contents (if such complaint is legitimate) and notify the owner of the illegal content of such removal;
- vii) only allow providers of accounts, community pages or content channels who have notified the MIC of their contact details to perform livestreams and revenue-generating activities;
- viii) publish its policies and procedures on customer services relating to cybersecurity; and
- ix) report on an annual basis (before 31 December) or on an ad hoc basis at the request of the MIC.

The Draft Decree introduces strict timelines for Cross-border Providers to take appropriate action at the request of the MIC:

- Within 3 hours of receiving the MIC's request, Cross-border Providers shall suspend any illegal livestream;
- Within 24 hours of receiving the MIC's request, Cross-border Providers shall lock any social network account, community page, channel for a period of 7 to 30 days if the user of such account, page or channel posts any illegal contents at least 5 times within a month and the MIC has previously requested to remove such illegal contents;
- Within 24 hours of receiving the MIC's request, Cross-border Providers shall suspend or remove any illegal cyber-applications from their apps stores;

In case a Cross-border Provider fails to comply with the timeline requirements referred to above, the MIC shall apply suitable measures to remove any illegal contents and suspend the illegal services or applications provided by such Cross-border Provider in Vietnam.

Tightened requirements for the provision of social network services

The Draft Decree classifies social networks into two categories for licensing purposes. A social network having at least 10,000 UVs per month will be considered as a large-scale social network and require a license relating to the provision of social network services. The term of the license for the provision of social network services is reduced from 10 years (as provided under Decree 72) to 5 years according to the Draft Decree.

Meanwhile, providers of social networks having less than 10,000 UVs per month (i.e. small-scale social networks) shall notify the MIC of their provision of social media services and obtain a certification from the MIC on such notification. Of note, user accounts, community pages or content channels on social networks, whether in Vietnam or overseas, having at least 10,000 followers or subscribers or above are obliged to send a notification to the MIC by post or electronic means. Nevertheless, the notification requirement shall not apply to accounts, pages or channels with less than 10,000 followers or subscribers, unless such accounts, pages or channels perform any livestream or revenue-generating services.

Relaxation on license requirements for online games

Under the current legislation, G1 game providers are required to obtain (i) a license for providing electronic games and (ii) a script approval in respect of each G1 game; G2, G3 and G4 game providers shall (i) obtain a certificate on electronic games registration and (ii) notify the MIC for each G2, G3 or G4 game before dissemination. The license on electronic games provision and the certificate on electronic games registration serve as a master permit for the game providers to conduct online games business.

Under the Draft Decree, the requirements for such master permits have been abolished. The script approval for each G1 game now is renamed as an electronic game dissemination license. Likewise, the notification of each G2, G3 and G4 game to the MIC is renamed as a certificate for game dissemination registration. Such license and certificate will be revoked if the game providers fail to disseminate the respective games within 12 months as from the receipt of such license or certificate. The term of an electronic game dissemination license or a certificate on game dissemination registration will not exceed 5 years.

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