

Comments on the Draft Law on Telecommunications

December 23, 2022

The Global Data Alliance¹ (GDA or Alliance) respectfully submits these comments on the Draft Law on Telecommunications (Draft Law) to the Ministry of Information and Communications.

The GDA supports Vietnam's efforts to develop a comprehensive digital governance regulatory framework, but is increasingly concerned with the restrictive direction of Vietnam's cross-border data policies. For instance, the GDA provided comments on data localization and related data restrictions in Vietnam in April 2021² (translation),³ September 2021⁴ (translation),⁵ November 2021⁶ (translation),⁷ December 2021⁸ (translation),⁹ and September 2022¹⁰ (translation).¹¹ The GDA has also joined a broad group of global industries in expressing concerns regarding Vietnam's cross-border data restrictions and data localization requirements.¹²

The GDA is concerned that **Article 75(1)** requires enterprises engaged in data center service and cloud computing service business to be responsible for "storing data in Vietnam in accordance with the relevant laws."

As noted in our prior submissions, data localization requirements will have a chilling effect on the local economy as they do not allow domestic enterprises and other organizations to fully benefit from cutting edge technology and services available in the global marketplace. For instance, data localization requirements may restrict domestic enterprises, both small and medium-sized enterprises (**SMEs**) and larger organizations such as hospitals and banks, from using world leading information technology and cloud computing solutions from service providers that offer their services from outside of Vietnam.¹³ Such services frequently provide best in class security capabilities; prohibiting domestic companies from using such services may reduce their competitiveness, especially internationally, and expose them to greater data security risks. While the GDA supports efforts to ensure data is protected commensurate with the risk its compromise poses, requiring data localization does not increase the protection of data and indeed can increase the risk that such data may be compromised.

In addition, the requirement to store data in Vietnam "in accordance with relevant laws" found in **Article 75(1)** creates legal uncertainty for enterprises because several relevant laws and draft regulations require local storage to different, and possibly contradictory, extents. For example, the Law on Cyber Security, the draft Personal Data Protection Bill, Decree 72, and Decree 53 each contain varying data localization requirements. It is not clear how **Article 75(1)** should be interpreted by enterprises facing multiple diverging data localization obligations.

Data localization requirements also raise concerns regarding Vietnam's commitments in international agreements and present challenges to Vietnam's efforts to harness digital transformation for the benefit of its economy and citizens. For example, such data localization requirements appear to be incompatible with Vietnam's international obligations under the Comprehensive and Progressive Trans-Pacific Partnership Agreement (**CPTPP**). Removing data localization requirements would enhance Vietnam's ability to participate in and benefit from regional trade initiatives, such as the Indo-Pacific Economic Framework (**IPEF**).

In sum, GDA recommends removing data localization mandates in the Draft Law. We specifically recommend deleting Article 75(1) from the Draft Law.

The GDA appreciates the opportunity to share these views and hope that they will be helpful as Vietnam considers next steps. Policy makers around the world appreciate the GDA's sharing best practices on data transfers, and we would welcome further engagement with Vietnamese authorities to address any questions regarding this submission.

¹ The Global Data Alliance is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, financial services, health, media and entertainment, natural resources, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance. For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org>

² [Vietnam: Comments on Draft Viet Nam Personal Data Protection Decree \(globaldataalliance.org\)](#)

³ [Góp ý về Dự thảo Nghị định về Bảo vệ Dữ liệu Cá nhân \(globaldataalliance.org\)](#)

⁴ [Vietnam: Comments on Proposed Amendments to Draft Decree 72 \(globaldataalliance.org\)](#)

⁵ [Ý kiến Đóng góp về các Sửa đổi được Đề xuất đối với Dự thảo Nghị định 72 \(globaldataalliance.org\)](#)

⁶ [Vietnam: Comments On Proposed Amendments To Draft Decree On Sanctions Against Administrative Violations In the Field of Cybersecurity \(globaldataalliance.org\)](#)

⁷ [Ý kiến Đóng góp về các Đề xuất Sửa đổi đối với Dự thảo Nghị định Quy định về Xử phạt Vi phạm Hành chính trong Lĩnh vực An ninh mạng \(globaldataalliance.org\)](#)

⁸ [GDA Comments on Proposed Amendments to Draft Decree 72 \(globaldataalliance.org\)](#)

⁹ [Ý kiến Đóng góp về các Sửa đổi được Đề xuất đối với Dự thảo Nghị định 72 \(globaldataalliance.org\)](#)

¹⁰ [Vietnam: GDA Comments on Decree 53 to Implement the Law on Cybersecurity \(globaldataalliance.org\)](#)

¹¹ [Góp ý của Liên minh Dữ liệu Toàn cầu về Nghị định 53 hướng dẫn Luật An Ninh Mạng \(globaldataalliance.org\)](#)

¹² [Vietnam: Multi-association Letter on Draft Decree on Personal Data Protection \(globaldataalliance.org\)](#)

¹³ Cloud services, including those delivered across-borders, provide security advantages over alternative IT delivery approaches such as on-premises solutions):

- Physical Security: Certified personnel can carefully monitor servers 24/7 to prevent physical breaches and can apply consistent protocols over a small number of locations.
- Data Security: Cloud Service Providers (**CSPs**) can ensure data integrity through use of state-of-the-art encryption protocols for data at-rest and in-transit. CSPs can establish redundant backups of data in geographically dispersed data centers, mitigating risk of loss in the event of power outages or natural or manmade disasters.
- Advanced Threat Detection: CSPs leverage state-of-the-art enhanced security intelligence They use regular penetration testing to simulate real-world attacks and evaluate security protocols against emerging threats.
- Automated Patch Deployment: Automated and centralized patch deployment and real time updates to network security protocols work to protect systems from newly identified vulnerabilities.
- Incident Management and Response: CSPs maintain global teams of incident response professionals to respond and mitigate the effects of attacks and malicious activity.
- Certification: CSPs are typically certified to international security standards and go through regular audits to maintain their certifications.