

**Comments of the Global Data Alliance on the
Cross-Border Data Transfer Elements of the Personal Data Protection Decree**

The Global Data Alliance¹ (“Alliance” or “GDA”) welcomes the opportunity to share its views on Vietnam’s *Personal Data Protection Decree*. The GDA supports Vietnam’s goals of improving standards of personal data protection in Vietnam. However, to avoid unintended harms, the GDA recommends that Vietnam explore alternative approaches to strict restrictions on cross-border data transfers within the Personal Data Protection Decree.

On April 17, 2023, the Ministry of Public Security (MPS) published the final Decree No. 13/2023/ND-CP on the Protection of Personal Data (“PDP Decree” or “the Decree”). In the past few years, the GDA has followed with great interest developments related to the Law on Cybersecurity. For instance, the GDA provided comments on data localization and related data restrictions in Vietnam in December 2022² (translation),³ September 2022⁴ (translation),⁵ April 2021⁶ (translation),⁷ September 2021⁸ (translation),⁹ November 2021¹⁰ (translation),¹¹ and December 2021¹² (translation).¹³ The GDA has also joined a broad group of global industries in expressing concerns with the restrictive direction of Vietnam’s cross-border data policies.¹⁴

I. Introduction

The GDA is a cross-industry coalition of companies, headquartered in different regions of the world, that are committed to high standards of data privacy and security. The GDA supports policies that help instill trust in the digital economy without imposing undue cross-border data restrictions or localization requirements that undermine data security, innovation, economic development, and international trade.

Alliance member companies are significant investors in Vietnam, investing millions of dollars and supporting thousands of jobs. GDA member companies are active in Vietnam in the aerospace, automotive, consumer goods, electronics, energy, financial services, health, media, supply chain, and telecommunications sectors. Data transfers enable the digital tools and insights that are critical to enabling entrepreneurs and companies of all sizes, in every country, to create new kinds of jobs, boost efficiency, drive quality, and improve output.

The GDA is concerned that the strict restrictions on cross-border data transfers within the Personal Data Protection Decree will impede Vietnam’s stated goals and will produce significant unintended consequences. We respectfully recommend that the Decree be revised to adopt robust and rigorous data protection standards that promote privacy and security while allowing enterprises in Vietnam to benefit from cross-border access to best-in-class cloud-delivered technology and while allowing citizens to benefit from economic and educational opportunities available online and across borders. In particular, we respectfully recommend that Vietnam explore alternative approaches to the strict restrictions on cross-border data transfers within the Personal Data Protection Decree, and to evaluate the other recommendations suggested herein.

II. Recommendations regarding requirements for cross-border data transfers

While we welcome the removal of data localization requirements that were contained in an earlier draft of the PDP Decree, we remain concerned that the PDP Decree will still lead to the same result: a severe restriction of international data transfers.

Under the Decree, cross-border transfers of personal data may proceed only through a single mechanism: consent. Furthermore, in addition to the data subject’s consent, each transfer requires: (1) a transfer impact assessment, and (2) reporting that transfer impact assessment to the MPS, with the requirement to submit updates and amendments accordingly. In practice, these provisions will create significant barriers to cross-border data transfers.

As noted in our prior submissions, restrictions on cross-border transfers will have a chilling effect on the local economy as they restrict domestic enterprises and other organizations from fully benefitting from cutting edge technology and services available in the global marketplace. For instance, restrictions on cross-border data

transfers may prevent domestic enterprises, both small and medium-sized enterprises (“SMEs”) and larger organizations such as hospitals, airlines and banks, from using world leading information technology and cloud computing solutions from service providers that offer their services from outside of Vietnam. Such services frequently provide best in class security capabilities. Due to such restrictions, domestic companies are likely to find it difficult to access such services, reducing their competitiveness, especially internationally, and exposing them to greater data security risks. The implementation of this requirement would not only be resource-intensive for government authorities to manage and review an enormous number of administrative processes in the form of impact assessments, and will result in additional administrative burden and operating costs for local and international businesses investing in Vietnam. Although we support efforts to ensure data is protected commensurate with the risk its compromise poses, the Decree’s onerous restrictions on cross-border data transfers may ultimately undercut data protection and increase the risk that such data may be compromised, by reducing access to privacy-protective and secure products and services.

Recommendation: Adopt an accountability-based approach to support cross-border data transfers, under which the transferring organization remains accountable for ensuring that the receiving organization protects the transferred personal data to the same standard required under Vietnamese law. At minimum, we strongly recommend that the MPS issue implementing guidance that permits companies to transfer data internationally on a basis other than the consent of the data subject and that avoids requiring companies to conduct individual transfer impact assessments. Accordingly, we recommend recognizing interoperable mechanisms for cross-border data transfers, such as contracts, including model contracts such as the ASEAN Model Contractual Clauses; intra-group schemes like binding corporate rules; and certifications like the APEC Cross-Border Privacy Rules (“CBPR”) system.

We also recommend that any data processing and cross-border transfer impact assessments be submitted to the MPS only upon request, as opposed to mandatorily in every case. This would be consistent with international best practice and would free up both corporate and government resources in engaging on material instances.

III. Recommendations regarding the transition period for the PDP Decree

The PDP Decree is scheduled to enter into force on July 1, 2023. This provides very little time for companies to implement its requirements. That is particularly problematic because the Decree also calls for a range of implementing guidance, including guidance to be issued by MPS.

Recommendation: We strongly recommend extending the implementation date for the PDP Decree. For example, MPS could extend the eligibility of the grace period in Article 43.2 to all organizations, allowing all a two-year transition period to adjust their systems and processes to comply with the PDP Decree. Alternatively, MPS could issue guidance recognizing that enforcement of the PDP Decree will not begin until at least one year after MPS has issued guidance implementing the Decree.

A two-year transition period with the introduction of new personal data protection regulations is in line with practices in other jurisdictions. In the European Union, the European Parliament adopted the GDPR in April 2016, with a two-year period before taking effect in May 2018. In Singapore, the Personal Data Protection Act was enacted in 2012, and came into force in 2014. In Thailand, the Personal Data Protection Act was enacted in 2019 and took effect in 2022, providing a three-year transition period.

The GDA urges Vietnam to reconsider these problematic aspects of the PDP Decree, and respectfully submits that the GDA’s Cross-Border Data Policy Principles¹⁵ may offer a more suitable policy approach that promotes data security and protection without sacrificing Vietnam’s economic and technological development.¹⁶

IV. Conclusion

In conclusion, we respectfully recommend that Vietnam remove the PDP Decree’s strict cross-border data transfer restrictions and consider allowing a two-year transition period for all organizations to comply with the PDP Decree. We appreciate the opportunity to share these views and hope that they will be helpful as Vietnam considers its next steps regarding the PDP Decree. Please do not hesitate to contact us with any questions regarding this submission.

Sincerely,

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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: GDA Comments on Draft Law on Telecommunications \(globaldataalliance.org\)](#)

³ [Ý Kiến Đóng Góp Về Dự Thảo Luật Viễn Thông \(globaldataalliance.org\)](#)

⁴ [Vietnam: GDA Comments on Decree 53 to Implement the Law on Cybersecurity \(globaldataalliance.org\)](#)

⁵ [Góp ý của Liên minh Dữ liệu Toàn cầu về Các Yêu Cầu Lưu Trữ Dữ Liệu tại Việt Nam trong Nghị Định 53 Hướng Dẫn Thi Hành Luật An Ninh Mạng \(globaldataalliance.org\)](#)

⁶ [Vietnam: Comments on Draft Viet Nam Personal Data Protection Decree \(globaldataalliance.org\)](#)

⁷ [Góp ý về Dự thảo Nghị định về Bảo vệ Dữ liệu Cá nhân \(globaldataalliance.org\)](#)

⁸ [Vietnam: 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: Comments On Proposed Amendments To Draft Decree On Sanctions Against Administrative Violations In the Field of Cybersecurity \(globaldataalliance.org\)](#)

¹¹ [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 \(globaldataalliance.org\)](#)

¹² [GDA Comments on Proposed Amendments to Draft Decree 72 \(globaldataalliance.org\)](#)

¹³ [Ý kiến Đóng góp về các Sửa đổi được Đề xuất đối với Dự thảo Nghị định 72 \(globaldataalliance.org\)](#)

¹⁴ [Vietnam: Multi-association Letter on Draft Decree on Personal Data Protection \(globaldataalliance.org\)](#)

¹⁵ [GDA's Cross-Border Data Policy Principles](#)

¹⁶ See Global Data Alliance, *Trends in International Negotiations regarding Cross-Border Data Transfers* (2020), <https://www.globaldataalliance.org/downloads/06022020GDInternationalNegotiations.pdf>.