



March 29, 2024

## GLOBAL DATA ALLIANCE COMMENTS ON THE DEVELOPMENT OF A LAW ON PERSONAL DATA PROTECTION

The Global Data Alliance (**GDA**) thanks the Ministry of Public Security (**MPS**) for the opportunity to comment on the development of a Law on Personal Data Protection (**PDP Law**).

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, cybersecurity, innovation, economic development, and international trade. Given the GDA's focus on cross-border data, we comment specifically on the cross-border data aspects in the development of the PDP Law.

This submission to the MPS provides recommendations on the following key areas:

- Definitions of key terms
- Cross-border transfers of personal data
- Transition period

We hope that these suggestions will help the MPS to refine its reports: (1) The Report to Assess the Policy Impact of Developing a Law on Personal Data Protection (**Draft Policy Impact Report**), and (2) The Report to Assess the Current State of Social Relations Related to Personal Data Protection (**Draft Report on the State of Personal Data Protection**).<sup>1</sup> We hope to be a resource for MPS as you develop a comprehensive and robust PDP Law that is interoperable with international best practices especially in relation to cross-border data transfers, unifies Vietnam's data protection regulations, protects the legitimate rights and interests of organizations and data subjects alike, and supports the growth of a vibrant and innovative digital economy.

### Definitions of Key Terms

The GDA supports the intent within the Draft Policy Impact Report for the PDP Law to introduce key definitions<sup>2</sup> including the terms "personal data", "data subject", "personal data processing",

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<sup>1</sup> See public consultation documents in the draft dossier provided by the MPS at <https://bocongan.gov.vn/pbgdpl/van-ban-moi/du-thao-ho-so-de-nghi-xay-dung-luat-bao-ve-du-lieu-ca-nhan-t1282.html>.

<sup>2</sup> See Draft Policy Impact Report, paragraph III.1.4.2. on pages 11-12.

“consent”, “personal data controller”, “personal data processor”, and the “transfer of personal data abroad”. It is important for the terms used in the PDP Law to align with existing and emerging international best practices and regulations for personal data protection.<sup>3</sup>

**Recommendation:** The definition of such key terms should be aligned with definitions used by international bodies such as ASEAN in its Framework on Data Protection<sup>4</sup> and the OECD in its Privacy Framework.<sup>5</sup> The terms should also be interoperable with definitions in important jurisdictions such as the EU, Japan, and Singapore.

## Cross-Border Transfers of Personal Data

The GDA strongly supports the importance of facilitating cross-border transfers of personal data. We appreciate the acknowledgement in both the Draft Policy Impact Report and the Draft Report on the State of Personal Data Protection about the importance of international data transfers, for example in relation to Vietnam’s commitments in international treaties and agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**) and the European Union-Vietnam Free Trade Agreement (**EVFTA**).

The PDP Law should enable and encourage global data transfers, which underpin the global economy. Organizations that transfer data globally should implement procedures to ensure the data transferred outside of the country continues to be protected. Where differences exist among data protection regimes, governments should create tools to bridge those gaps in ways that both protect privacy and facilitate global data transfers. Data protection frameworks should not impose data localization requirements for either the public or private sectors, because such requirements can frustrate efforts to implement effective security measures, impede business innovation, and limit services available to consumers.

**Recommendation:** The PDP Law should 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 standards as those required under Vietnamese law. Additionally, the PDP Law should recognize a range of interoperable mechanisms for the cross-border transfer of personal data, 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**) systems.

This approach would adopt an important change from the current PDP Decree which relies on consent to permit cross-border transfers of personal data. Furthermore, under the current PDP Decree, 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 create significant barriers to cross-border data transfers.

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<sup>3</sup> Draft Policy Impact Report, paragraph I.3., page 3.

<sup>4</sup> ASEAN Telecommunications and Information Technology Ministers Meeting (TELMIN), Framework on Personal Data Protection, 25 November 2016 at <https://asean.org/wp-content/uploads/2012/05/10-ASEAN-Framework-on-PDP.pdf>

<sup>5</sup> OECD Privacy Principles, 11 July 2013 at [https://www.oecd.org/sti/ieconomy/oecd\\_privacy\\_framework.pdf](https://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf).

As noted in our prior submissions,<sup>6</sup> restrictions on cross-border transfers 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 companies, including 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. Domestic companies subject to data transfer restrictions are likely to find it difficult to access such services, reducing their competitiveness, especially internationally, and exposing them to greater data and cybersecurity risks. Restrictions on international data transfers are also resource-intensive for government authorities to manage. The additional impact assessment reporting obligations in the PDP Decree sap the resources of both the businesses seeking to conduct international commerce and the MPS, all with very little if any improvement in the protection of personal information. Although we support privacy and security-protective regulations, the PDP Decree's onerous restrictions on cross-border data transfers 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:** We strongly recommend that the PDP Law be drafted to support international data transfers. Specifically, it should permit companies to transfer data internationally on legal bases not limited to the consent of the data subject and using mechanisms that do not require companies to conduct individual transfer impact assessments for each transfer. In addition, if data processing and cross-border transfer impact assessments are imposed for particular circumstances, they should be required to be submitted to the MPS or relevant data protection authority only upon request, as opposed to being required in every case. This would be consistent with international best practice and would help both companies and regulators better focus their resources on material instances.

### **Transition Period**

As acknowledged in both the Draft Policy Impact Report and the Draft Report on the State of Personal Data Protection, there is currently little harmonization in the domestic laws and regulations addressing personal data protection in Vietnam. With the promulgation of a Personal Data Protection Law and the accompanying implementing regulations and guidance, we can expect many issues and challenges when implementing new data protection processes and practices. Government agencies, organizations including large and small companies, and data subjects will need time to adjust to the change. We also strongly recommend that the Government consult with stakeholders throughout the transition period, to facilitate information-sharing about implementation issues as they arise.

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<sup>6</sup> Global Data Alliance Comments on the Cross-Border Data Transfer Elements of the Personal Data Protection Decree, June 30, 2023, at <https://globaldataalliance.org/wp-content/uploads/2023/07/en0630202gdapdpd.pdf> and GDA Comments on Decree 53 to Implement the Law on Cybersecurity, September 30, 2022 at <https://globaldataalliance.org/wp-content/uploads/2022/09/en09302022gdavtde53.pdf>.

**Recommendation:** We recommend including a two-year transition period from the time the PDP Law is enacted to the commencement of its effective date. This will allow time for any implementing regulations and guidance to be issued and allow organizations sufficient time to adjust their systems and processes to comply with the PDP Law.

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

## **Conclusion**

In conclusion, we respectfully recommend that Vietnam align the definitions of key terms with international practice, adopt an accountability-based approach with various mechanisms to support cross-border data transfers, avoid onerous reporting requirements for companies related to cross-border data transfers, and consider allowing a two-year transition period for all organizations to comply with the PDP Law. We appreciate the opportunity to share these views and hope that they will be helpful as Vietnam considers its next steps regarding the PDP Law. Please do not hesitate to contact us with any questions regarding this submission.

Thank you for the opportunity to provide comments.

Sincerely,

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