



September 4, 2024

GLOBAL DATA ALLIANCE COMMENTS ON THE DRAFT DATA LAW

The Global Data Alliance (**GDA**) thanks the Ministry of Public Security (**MPS**) for the opportunity to comment on the draft Data 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 draft Data Law.

We hope that these suggestions will help the MPS to refine the draft Data Law.¹ We hope to be a resource for MPS as you develop a comprehensive and robust data governance framework in Vietnam that is interoperable with international best practices especially in relation to cross-border data transfers and supports the growth of a vibrant and innovative digital economy.

Cross-Border Data Transfers

The Data 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 governance 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, defend critical networks, impede business innovation, and limit services available to consumers.

As noted in our prior submissions, restrictions on cross-border transfers have a chilling effect on the local economy as they restrict domestic enterprises and other organizations from fully benefiting 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-

¹ Public consultation on Draft Data Law accessed on 7 August 2024 at <https://bocongan.gov.vn/pbgdpl/van-ban-du-thao/du-thao-luat-du-lieu-449.html>.

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 security risks. Restrictions on international data transfers are also resource-intensive for government authorities to manage.

The GDA strongly supports the importance of facilitating cross-border data transfers and supports Vietnam's participation in the Global Cross Border Privacy Rules Forum. While we appreciate the acknowledgement in Article 22.5 that treaties or international agreements that Vietnam has signed or acceded to shall apply, we remain concerned that restrictions on the cross-border transfer of a broad range of data would result in de facto data localization.

Article 3.24 defines "Important Data" as "data in a field, group or area that may directly endanger national security, economic activities, social stability, public health and safety when leaked, forged or destroyed." Article 3.25 defines "Core Data" as "important data with high coverage in fields, groups or areas that may directly affect political security when illegally used or shared. Core Data includes data related to important fields of national security, data related to the lifeblood of the national economy, important livelihoods of the people, major public interests and other data collected by national agencies." Article 22.3 prescribes the competence to decide on the transfer of Core Data to the Prime Minister, and the competence to decide on the transfer of Important Data to the MPS.

Aside from obtaining approval from either the Prime Minister or the MPS, a data management agency wishing to transfer Important Data or Core Data overseas would need to complete a data safety assessment before transferring the data and carry out continuous supervision and period re-evaluation of the data safety assessment. See Article 22.7 and 22.8. As the definitions of Important Data and Core Data cover a wide range of data types, these requirements will have a chilling effect on the cross-border transfer of data, and more broadly, the use of data for further innovation that can boost Vietnam's digital economy.

It is inadvisable to restrict transfers of new "important data" or "core data" categories that sweep much more broadly than the type of highly sensitive government data that actually implicates national security. Vietnam should avoid the imposition of unnecessary or arbitrary restrictions on cross-border data transfers of these data types, given its relatively low ranking on various international indices of cross-border data restrictiveness.² For both non-governmental data and governmental data that should be made publicly available – consistent with Vietnam's commitments under Article 12 of the WTO Agreement on E-Commerce to seek to "facilitate public access to and use of government data" – a more nuanced approach should be considered.³

Recommendation: We strongly recommend that Important Data and Core Data be narrowly defined so that only the most sensitive data are included, e.g., national security data. The Data Law should exhaustively specify the datasets that would fall within "Important Data". The current broad definition would result in organizations taking a sub-optimal and overly restrictive approach in processing their data, unnecessarily driving up compliance costs. We further recommend excluding business data owned by private sector organizations from the scope of Important Data and Core Data.

² See Global Data Alliance, *Cross-Border Data Policy Index* (2023), at: <https://globaldataalliance.org/resource/cross-border-data-policy-index/>

³ See also, BSA | The Software Alliance, *Open Data - Bridging the Data Divide* (2021), <https://www.bsa.org/files/policy-filings/061120bsaopendata.pdf>

Recommendation: The GDA recommends replacing the term “standard contract” in Article 22.4(b) as it typically applies to standard contractual clauses for the transfer of personal data. If the use of standard contracts is for the transfer of personal data, this requirement should be included in the Personal Data Protection (**PDP**) Law and not the Data Law. If the contracts are for the transfer of Important Data or Core Data and not personal data, the Data Law should specify a different term to avoid confusion with standard contractual clauses as an internationally accepted mechanism for the transfer of personal data.

Transition Period and Engagement with Stakeholders

Extending the legislative timeline for the draft Data Law is crucial to ensure comprehensive stakeholder engagement and thoughtful development of the law. A rushed timeline risks overlooking critical feedback from experts, industry players, civil society, and other key stakeholders, which could lead to unintended consequences such as regulatory gaps or unnecessarily burdensome compliance requirements. Allowing more time for dialogue and collaboration will enable the creation of a more balanced and effective legal framework that aligns with global best practices while addressing Vietnam’s unique context and requirements. An extended timeline would also provide sufficient opportunity to refine and harmonize the provisions within the Data Law with the existing Law on Cybersecurity and the upcoming PDP Law. This will lead to a more robust data governance regime.

Recommendation: We recommend including sufficient time for engagement with stakeholders before promulgating the Data Law and recommend a two-year transition period from the time the Data Law is enacted to the commencement of its effective date. This will allow harmonization of the various laws on data and provide organizations sufficient time to adjust their systems and processes to comply with the Data Law.

Conclusion

In conclusion, we respectfully recommend that Vietnam avoid undue restrictions on cross-border data transfers and consider allowing a two-year transition period for all organizations to comply with the Data Law. We appreciate the opportunity to share these views and hope that they will be helpful as Vietnam considers its next steps regarding the Data 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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