



September 4, 2024

GLOBAL DATA ALLIANCE COMMENTS ON THE DRAFT DIGITAL TECHNOLOGY INDUSTRY LAW

The Global Data Alliance (**GDA**) thanks the Ministry of Information and Communications (**MIC**) for the opportunity to comment on the draft Digital Technology Industry (**DTI**) 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 DTI Law.

The GDA commends the MIC for soliciting stakeholder input on the draft DTI Law. This continues the positive practice of consulting with stakeholders, including industry, as you work towards developing the digital economy, digital society, and digital government. Implementing a DTI Law that aligns with global best practices is crucial for fostering a dynamic and innovative domestic digital economy and enables Vietnamese companies to more easily participate in the global digital ecosystem. We recommend further active dialogue with the private sector and continued open discussions to achieve such common goals.

Cross-Border Data Transfers

The GDA strongly supports the importance of facilitating cross-border data transfers. The DTI 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 governance regimes, governments should create tools to bridge those gaps in ways that both protect privacy and facilitate global data transfers. The DTI Law should not impose data localization requirements as they can frustrate efforts to implement effective security measures, impede business innovation, and limit services available to consumers.

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

Article 27 in the second Draft of the DTI Law (**Draft 2**)¹ requires organizations and individuals engaged in digital technology industry activities in Vietnam to provide information on digital data circulating across borders to the Government. Having such requirement has the effect of restricting cross-border data transfers as it represents an extra step to take in order to transfer data. However, subsequent drafts of the DTI Law² do not contain this requirement that restricts cross-border transfers. We commend the MIC for removing the restriction and recommend that undue restrictions on cross-border data transfers continue to be excluded from the final DTI Law, and indeed other regulations in Vietnam.

As you finalize this and related policies, we urge Vietnam to fully assess the compatibility between any restrictions on data transfers or data localization mandates with its obligations under CPTPP Articles 14.11 and 14.14, consistent with the concerns raised in our prior submissions (in May 2024, June 2023,³ December 2022,⁴ December 2021,⁵ November 2021,⁶ September 2021,⁷ and April 2021⁸).

Public Consultation Period and Engagement with Stakeholders

The public consultation process for the DTI Law was marked by the release of multiple drafts on the consultation website.⁹ The first draft of the DTI Law was replaced by a second draft (**Draft 2**)¹⁰ after the start of the consultation period. A third draft of the DTI Law (**Draft 3**) was submitted to the

¹ Draft DTI Law accessed on 7 August 2024 on <https://mic.gov.vn/van-ban-phap-luat/du-thao/2199.htm>.

² Documents of the meeting to review the draft Law on Digital Technology Industry on August 6, 2024 at <https://www.moi.gov.vn/qt/tintuc/Pages/chi-dao-dieu-hanh.aspx?ItemID=4434>, and Workshop to collect comments on the draft Law on Digital Technology Industry by the Vietnam Federation of Commerce and Industry (VCCI) and National Assembly's Committee on Science, Technology and Environment accessed on 27 August 2024 at https://vibonline.com.vn/su_kien/su-kien-hoi-thao-gop-y-luat-cong-nghep-cong-nghe-so.

³ GDA Comments on the Cross-Border Data Transfer Elements of the Personal Data Protection Decree, June 2023, <https://globaldataalliance.org/wp-content/uploads/2023/07/en0630202gdapdpd.pdf>.

⁴ GDA Comments on Draft Law on Telecommunications, December 2022, <https://globaldataalliance.org/wp-content/uploads/2022/12/en12232022gdavtdfttelecom.pdf>.

⁵ GDA Comments on Proposed Amendments to Draft Decree 72, December 2021, <https://globaldataalliance.org/wp-content/uploads/2022/01/en123021gdacmtsdrfde72.pdf>.

⁶ GDA Comments On Proposed Amendments To Draft Decree On Sanctions Against Administrative Violations In The Field of Cybersecurity, November 2021, <https://globaldataalliance.org/wp-content/uploads/2021/11/en11182021gdaadminviocybersec.pdf>.

⁷ GDA Comments on Proposed Amendments to Draft Decree 72, September 2021, <https://globaldataalliance.org/wp-content/uploads/2021/09/en09062021vtdrftdecree72.pdf>.

⁸ GDA Comments on Draft Viet Nam Personal Data Protection Decree, April 2021, <https://globaldataalliance.org/wp-content/uploads/2021/07/en04092021gdavnppdpd.pdf>.

⁹ Public Consultation on Draft Law on Digital Technology Industry, last accessed on 20 August 2024 at <https://mic.gov.vn/van-ban-phap-luat/du-thao/2199.htm>.

¹⁰ Draft DTI Law accessed on 7 August 2024 on <https://mic.gov.vn/van-ban-phap-luat/du-thao/2199.htm>.

Ministry of Justice (**MOJ**) on August 6, 2024, as part of the Review of the draft DTI Law.¹¹ A fourth draft¹² was released in the invitation to a Workshop to collect comments on the draft DTI Law held by the Vietnam Federation of Commerce and Industry and the National Assembly's Committee on Science, Technology and Environment. These multiple drafts were released before the end of the public consultation period on September 2, 2024. The existence of multiple drafts creates confusion within the industry, as it remains unclear on which version stakeholders should base their comments. This complicates our ability to provide meaningful feedback, affecting the quality of feedback received and the effectiveness of the consultation process.

Extending the consultation timeline for the draft DTI Law is important 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 other technology laws under development such as the Data Law and the Personal Data Protection Law, together with the existing Law on Cybersecurity. This will lead to a more robust data governance regime and a predictable policy environment that builds trust among businesses and customers.

Recommendation: The GDA recommends including sufficient time for engagement with stakeholders before promulgating the DTI Law by extending the consultation period by one month. Further, we recommend a two-year transition period from the time the DTI Law is enacted to the commencement of its effective date. This will allow harmonization of the various laws on data and technology, and provide organizations sufficient time to adjust their systems and processes to comply with the DTI Law. This includes fully assessing the compatibility between any restrictions on data transfers or data localization mandates with Vietnam's obligations under CPTPP Articles 14.11 and 14.14, as raised earlier in our submission.

¹¹ Documents of the meeting to review the draft Law on Digital Technology Industry on August 6, 2024 at <https://www.moj.gov.vn/qt/tintuc/Pages/chi-dao-dieu-hanh.aspx?ItemID=4434>.

¹² Workshop to collect comments on the draft Law on Digital Technology Industry by the Vietnam Federation of Commerce and Industry (VCCI) and National Assembly's Committee on Science, Technology and Environment accessed on 27 August 2024 at https://vibonline.com.vn/su_kien/su-kien-hoi-thao-gop-y-luat-cong-nghiep-cong-nghe-so.

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 DTI Law. We appreciate the opportunity to share these views and hope that they will be helpful as Vietnam considers its next steps regarding the DTI 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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