



November 23, 2024

GLOBAL DATA ALLIANCE COMMENTS ON THE DRAFT LAW ON PERSONAL DATA PROTECTION

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

We hope that these suggestions will help the MPS to refine its draft PDP Law.¹ 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

Applying stringent legal obligations to a broad range of data, regardless of its context and the actual potential for harm to the user will chill data-driven innovation in Vietnam and negatively impact economic growth. Article 2.1 defines personal data as information [...] associated with a specific person or *helping to identify* a specific person. We suggest that the draft PDP Law adopt a concept of personal data based on context, under which data would be deemed "personal data" only if it

¹ See Draft Law on Personal Data Protection, 24 September 2024, at <https://chinhphu.vn/du-thao-vbqpp/du-thao-luat-bao-ve-du-lieu-ca-nhan-6957>.

refers to an identified or identifiable natural person. This is in line with the European Union General Data Protection Regulation (**EU GDPR**)² and other global data protection regimes.

Recommendations: The use of definition of key terms in the draft PDP Law should be aligned with definitions used by international bodies such as ASEAN in its Framework on Data Protection³ and the OECD in its Privacy Framework.⁴ 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 facilitating cross-border transfers of personal data. The draft 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.

As highlighted in earlier submissions, the draft PDP Law should not rely on consent as the chief legal basis to permit cross-border transfers of personal data as does the PDP Decree. In addition to the data subject's consent, the draft PDP Law requires a transfer impact assessment to be reported to the specialized agency and submit updates and amendments accordingly for each international data transfer. These provisions create significant barriers to cross-border data transfers.

Restrictions on cross-border transfers have a chilling effect on the local economy as they impede 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 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 their ability to process global security data in real time.

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 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 draft PDP Law will overwhelm the resources of both the businesses seeking to conduct international commerce and the specialized agencies, with effectively no improvement in the protection of personal information. Although we support privacy- and security-protective regulations, the draft PDP Law'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

² EU GDPR, Article 4(1)

³ 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>

⁴ OECD Privacy Principles, 11 July 2013 at https://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf.

secure products and services, and impact Vietnamese data subjects' ability to participate in the global economy.

Lastly, an over-reliance on consent as the main basis for all data processing creates the risk of consent fatigue on the part of the data subject while also inhibiting controllers from pursuing legitimate purposes such as fraud prevention or data security efforts where user consent is not the most appropriate or effective legal basis. **Recommendations:**

- 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. Specifically, the draft PDP Law should permit companies to transfer data internationally on legal bases not limited to the consent of the data subject, such as legitimate interest to process personal data.
- 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 Global Cross-Border Privacy Rules (CBPR) system. Under these mechanisms, organizations transferring personal data should not be required to conduct transfer impact assessments for each transfer.

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, and avoid onerous reporting requirements for companies related to cross-border data transfers. We appreciate the opportunity to share these views and hope that they will be helpful as Vietnam refines its draft 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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