

# CHAPTER 1 DIGITAL

## OVERVIEW

In past years, we witnessed the great efforts Vietnam has put into building a regulatory framework for digital technologies. We wish to renew our support in accompanying Vietnam in improving this framework thanks to the insights of our experts. Our advice falls in areas such as cybersecurity and personal data protection, the scope of the law on telecommunication and a broader view of industry collaboration. It is paramount to sustain our implementation efforts toward building a framework for both Vietnamese and European institutions to work harmoniously together, ensuring accountability across the supply chain while fostering proper protection of consumers across borders. The Digital Sector Committee would like to suggest prioritising projects that will improve these conditions, involving international experts in dialogues to align with global standards. We believe that the following topics would be beneficial both at a national and global level:

- Working to achieve compatibility between regulations of the data economy between Europe and Vietnam;
- Implementing platforms and tools towards traceability, the origin of goods, and transparency;
- Facilitate the movement of data across borders in compliance with Vietnamese law;
- Adoption of internationally recognised technology security standards; and
- Pursuing clarity and coherence in the growing number of texts regulating the usage of digital technology, as our comment on the law of telecommunication suggests.

## I. CYBERSECURITY REGULATIONS AND DIGITAL ECONOMY REGULATION

Relevant authorities: Ministry of Information and Communications (MIC), Ministry of Public Security (MPS), Office of the Government (OOG), Ministry of Justice (MOJ), Ministry of Science and Technology (MOST)

### Cybersecurity and data protection regulations

#### Issue description

The Law on Cybersecurity<sup>1</sup> has recently been supplemented by Decree 53<sup>2</sup>, detailing a number of articles of the Law on Cybersecurity which provides strong requirements on data localisation and local office establishment. This legislation requires government agencies and domestic enterprises to store certain types of data in Vietnam while mandating both local storage and physical presence in Vietnam of foreign enterprises in stipulated instances. On 1 July 2023, the Personal Data Protection (PDP) Decree came into effect, which frames how Vietnamese businesses must operate personal data. That said, we note that the above-mentioned regulations still lack detailed written guidelines, which are needed for clear and consistent implementation. As such, the issue we want to address is to ensure businesses falling under the scope of the law are provided with clear guidelines so that they can comply at a reasonable cost.

#### Potential gains/concerns for Vietnam

The main gain for Vietnam from a cyber security and a data protection framework that is convenient for businesses to comply with is a boost in productivity for companies operating on its territory. The number of digital tools,

<sup>1</sup> Law 24/2018/QH14 dated 12 June 2018 of the National Assembly on Cybersecurity (Law on Cybersecurity).

<sup>2</sup> Decree 53/2022/ND-CP dated 15 August 2022 of the Government elaborating a number of articles of the Law on Cybersecurity of Vietnam (Decree 53).

and along with it the amount of data that is processed, is growing exponentially. While the relevant regulations need to reflect and frame the usage of digital tools and related processing of data, it must not hinder the digital transformation of businesses. If companies operating in Vietnam hesitate to implement the newest digital technologies for fear of non-compliance, their productivity will fall behind that of companies with the possibility of implementing such tools, in jurisdictions with clearer guidance, where a long-term digital transformation strategy can be designed.

This issue is even more daunting for international companies that have to comply not only with Vietnamese regulations but also with equivalent ones in other regions they operate in. Any rule in Vietnam constraining how they can implement their IT system will reduce the attractiveness of the country in regard to other options. For example, we noted that Decree 53's rules for the implementation of the Law on Cybersecurity's data localisation and local office requirements cast a wide net and, capture many entities. It is important to provide clear guidelines to companies concerned by the new regulation. We want to underline that the data localisation measures will not necessarily boost security much. The physical placement of the data has no bearing on security. Every system that is directly or indirectly connected to it is subject to assaults (cross-border attacks and data breaches are the norm). Security is primarily concerned with (1) the physical infrastructure in which data is stored, and (2) who owns and manages the data (and can, therefore, assist law enforcement). Vietnamese businesses should be allowed to store and process their data in the most secure data centres, which are audited against global security and privacy standards by independent third parties. Only global service providers can give this degree of security in this area.

## Recommendations

- Clarify which entities fall under data localisation and local office requirements. While Decree 53 states that all domestic enterprises are subject to local storage, it is noted that the Law on Cybersecurity requires this of domestic providers of “telecommunications services, internet services, and value-added services in Vietnam cyberspace”. Therefore, clarification is needed on this point. In addition, the plain language of Decree 53 is unclear as to whether a local branch of an offshore company will be deemed a domestic enterprise, so clarification in the form of official written guidance is still needed in this regard as well for clear and consistent implementation. In the case of foreign enterprises, the data localisation and local office requirements are applicable only when they provide regulated service(s) (e.g., telecommunications services, data storage in cyberspace, e-commerce, online payment, payment intermediaries, etc.), but the level of involvement in said regulated services is not specifically provided for in Decree 53;
- Ensure consistency across regulations. For example, in the banking industry, the SBV enables foreign branches to host and process users' data abroad, in their headquarters. However, Decree 53's data localization provisions and the PDP Decree's cross-border data transfer rules may create conflict with other existing regulations. At present, therefore, there is a risk that companies, especially foreign enterprises, are experiencing difficulties in their compliance efforts; and
- Provide a clear process to enable cross-border data transfer when needed. At the moment, the plain language of both Decree 53 and the PDP Decree is unclear as to whether keeping a copy of the data in Vietnam, while sending data abroad, is compliant or not. Therefore, clarification in the form of official written guidance is needed for compliance purposes because international companies must send data to their headquarters in the process of their operations.

## Harmonisation of the data protection framework

### Issue description

The European Union has had the General Data Protection Regulation (GDPR), the Digital Service Act (DSA), the Digital Market Act (DMA), the Data Governance Act, the Security Act, etc. Meanwhile, Vietnam has updated and continued to develop the Law on Cybersecurity, Decree 72 on the Management, Provision, and Use of Internet services and Online information<sup>4</sup>, the Law on E-transactions<sup>5</sup>, the PDP Decree, etc. In light of the National Digital

<sup>3</sup> Decree 13/2023/ND-CP dated 17 April 2023 of the Government on Protection of Personal Data (PDP Decree).

<sup>4</sup> Decree 72/2013/ND-CP dated 30 June 2020 of the Government on the management, provision, and use of internet services and online information (Decree 72) amended by Decree 27/2018/ND-CP (Decree 27).

<sup>5</sup> Law 51/2005/QH11 dated 29 November 2005 of the National Assembly on E-Transactions (Law on E-Transactions).

Transformation Programme to 2025, with Orientation to 2030 (VNDS) as approved by the Prime Minister with Decision 749<sup>6</sup>, Vietnam is ardently working to develop its digital government, economy, and society. It is also establishing local digital businesses with improved global competitiveness and capacity. Issues:

- Conflicts that may arise for companies already subject to EU-GDPR and Vietnamese companies doing business with EU “data subjects” and that, therefore, need to comply with GDPR;
- Finding a data policy that fulfils the Vietnamese Government’s agenda of data security while addressing the concerns of the business community. The economic impact of such policies needs to be considered; and
- Providing for provisions that do not hinder the free-flow of data across legal instruments including, but not limited to, the Law on Cybersecurity, Decree 72, and the PDP Decree.

### Harmonisation of Vietnamese regulations and GDPR

Vietnam and Europe need to address any conflict that may arise for companies already subject to European and Vietnamese regulations. The establishment of a Facilitator to deal with conflicting cases in agreement with the Personal Data Protection Committee - or any relevant institution on the Vietnamese side - the European Data Protection Board, and the European Commission, would assist in this regard. This Facilitator could certify any Vietnamese company processing GDPR-protected data. Certification implies adherence to a code of conduct, where the company states that it complies with the EU-GDPR standards to do business with EU partners.

This Facilitator would handle any issues or difficulties between Vietnamese and European subjects. For example, any request regarding Vietnamese regulations that could conflict with EU-GDPR would be addressed by the Facilitator.<sup>7</sup> Exceptional access to EU-GDPR protected data can be granted under Article 49 (Derogations) of EU-GDPR and in conformity with a Judiciary Agreement (EU-GDPR Article 48) from the EU side. The Facilitator could be a newly-created institution consisting of a member of the Personal Data Protection Committee for the Vietnamese side and nominated members from the EU. Alternatively, it could be included in a third-party institution, for instance at the ASEAN level.

### Impact on Vietnam’s Economy

The compatibility of Vietnamese laws with relevant provisions of different jurisdictions and international best practice is vital to ensure the further development of the local digital economy, promote a favourable business environment for European investors/ enterprises in Vietnam, and bring benefits to local consumers. Consistent and aligned approaches would help avoid confusion and compliance-related issues. For example, it would be disruptive and costly for Vietnamese companies that use global payment, social media, e-payments, smart technologies, cloud computing, and advertising services to store data in Vietnam while the services from international providers are not also hosted here. Businesses in Vietnam are leveraging ICT and other services to increase business and participate in cross-border trade.

### Impact on Companies

Vietnamese companies compete on a global scale. As a result, they require cutting-edge resources and industry-leading security to ensure they remain competitive with their regional peers. When issuing regulations on IT services and the digital economy, Vietnam should assess the costs of compliance in the proposed framework. For example, forced localisation limits the ability of businesses to access tools necessary to lower IT costs, innovate, and scale rapidly.

The distinction between “domestic” and “foreign” enterprises with respect to statutory requirements would likely lead to significant confusion and disruption. Decree 53 has included FDI companies registered under the Vietnam’s Law on Investment and incorporated in Vietnam (both wholly-foreign-owned and majority foreign-owned) in its definition of domestic enterprise (though it remains unclear from the plain language of Decree 53 whether the term will cover local branches of foreign companies, which is why additional written guidance is

<sup>6</sup> Decision 749/QĐ-TTg dated 3 June 2020 of the Prime Minister approving program for National digital transformation by 2025 with orientation towards 2030 (Decision 749).

<sup>7</sup> For example, Article 21 of the Cyber Security Law on the prevention and response to cybersecurity emergencies.

being sought for). Taking this into account, requiring such digital service providers in Vietnam to store users' data here is inconsistent with the business model of most multinational companies providing digital services. Even if MNCs use some data storage services in Vietnam to reduce latency to customers, for many, most data processing and advanced analytics occur offshore due to cost efficiencies and service improvement insights made possible through data aggregation.

### Potential gains/concerns for Vietnam

The fact that Vietnamese regulations could potentially conflict with those in other regions might cause difficulties for businesses. For example, a Vietnamese business that collects and processes the personal data of data subjects in another country with strict data protection regulations (e.g., the EU-GDPR) could find itself in an untenable position with respect to how it processes that data. In short, compliance with Vietnamese regulations could be deemed incompatible with various EU requirements under EU-GDPR.<sup>8</sup> If both Vietnamese law and other laws govern a conflict, businesses would be unsure about which regulation is applicable and, therefore, might risk non-conformity with one while adhering to the other, risking large fines as a result. This could lead to companies deciding not to develop their business in Vietnam.

### Recommendations

- Ensure compatibility between Vietnam and the EU with regards to Article 45 of the EU-GDPR transfers based on an adequacy decision including a concrete timeline and action list;
- Establish a Facilitator to resolve conflicting cases with the agreement of the Personal Data Protection Committee - or any relevant institution on the Vietnamese side - the European Data Protection Board, and the European Commission;
- Start a process and create a working group to bring the EVFTA and the Vietnamese regulations in line with each other, addressing current conflicting situations; and
- Classify the data processing and develop a data classification system whereby only national secrets must be onshore and other non-state secrets may be offshore to lower the economic impact on the local economy, especially more vulnerable start-ups, and small and medium-sized companies.

## II. COLLABORATION IN THE DIGITAL AGE TO ADVANCE THE SEMICONDUCTOR INDUSTRY

Relevant authorities: Ministry of Information and Communications (MIC), Ministry of Public Security (MPS), Ministry of Justice (MOJ), Ministry of Science and Technology (MOST)

### Issue description

One of the objectives of EuroCham Vietnam is to unlock the potential collaboration between Vietnamese and European companies. Following the signature of the EVFTA, we have seen a growing interest from European companies to trade with, or even implement their production lines in Vietnam. In this context, the Digital Sector Committee would like to point out the importance of digital technologies in the future of this industrial collaboration. In the meantime, the European Union is issuing arrays of standards and regulations to support social justice and environmental protection. These rules imply that companies operating in Vietnam, both local and foreign, are able to compile reliable information about their supply chains and share it with their trade partners in Europe. Digital technologies come in line to enable this compliance at a reasonable cost.

The top priority of EuroCham Vietnam is to maximize the potential of Vietnam in the semiconductor industry. We aim to realize the initiatives announced by the Vietnamese Government to improve the business environment to be the most favourable and attractive for European investors and businesses in the semiconductor industry, in

<sup>8</sup> For example, a Vietnamese data processor could have to share personal data in its system under Article 21, Law on Cybersecurity. If, in the meantime, this data is protected by the GDPR through the Standard Contractual Clause, there is a conflict.

harmony with the regulations in the Chip Act. The semiconductor industry is a key pillar in Vietnam's industrialization and modernization process. Since the 2000s, Vietnam has attracted investment and presence from multinational companies such as Samsung, Apple, Intel, Qualcomm, and many other conglomerates investing in semiconductor technology, significantly contributing to Vietnam's strong integration into the semiconductor industry regionally and globally. This is a sector with enormous development potential, with increasing investments in sophisticated products as well as R&D activities.

Eurocham is looking ahead and commits to support the profound transformations Vietnam needs to undertake to become a key player in the region. For instance, the integration of advanced digital technologies, such as Industry 4.0, IoT, and AI, stands as a cornerstone for the enhancement of manufacturing processes. This strategic implementation not only promises to elevate supply chain transparency and efficiency but also fosters a responsive and adaptable production environment. The incorporation of these cutting-edge technologies is key to maintaining a competitive and innovative edge in the global semiconductor market.

- **Sustainability:** By integrating sustainability metrics into these digital tracking systems, companies and oversight bodies can better measure and control the environmental impact of the entire supply chain. This proactive approach not only aligns with global environmental standards but also contributes to attracting investors and stakeholders. This becomes increasingly vital as international businesses show a growing interest in addressing environmental concerns;
- **Intellectual Property protection:** Providing a trusted framework for foreigners to bring their technologies into Vietnam without fear of IP infringement is necessary to any form of industrial cooperation; and
- **Harmonisation of Cybersecurity and Data Protection Regulation:** We detailed the mechanisms of this issue in the chapter "Cybersecurity and Data Protection Regulation". In the context of industrial cooperation, cybersecurity and data privacy (when sharing data with other supply chain participants) are paramount so that data can flow between regions and actors in a secure way, in full compliance while maintaining a low cost.

### Potential gains/concerns for Vietnam

For Vietnam, implementing the basis of the industrial collaboration with Europe will enable long-term growth of global trade between the two regions. As European standards are currently the highest in the world, unlocking this huge market for Vietnamese industry players will also be foundational not only in setting Vietnam as a mature player in the World Trade Organisation (WTO) but also a key player in the semiconductor industry. This strategic alignment will elevate the country's standing in global trade, hence attract further investment and innovation, ultimately cementing Vietnam's role as a key partner in global digital technologies.

However, this endeavour is not without its concerns. Meeting the European standards could require substantial investment in infrastructure and workforce training. The process of harmonizing data protection laws, IP rights, and supply chain sustainability standards may also pose regulatory and compliance challenges.

### Recommendations

- **Promote the usage of digital technologies within the supply chain:** We recommend Vietnamese stakeholders push forward in implementing digital technologies to bring unparalleled transparency to supply-chain operations. This should include real-time tracking systems for sourcing materials, manufacturing processes, and distribution networks. By doing so, Vietnamese players will be better equipped to validate the standards and efficacy of supply-chain systems, ensuring compliance with international norms;
- **Promote European-Vietnamese Partnerships in the Semiconductor Industry:** Foster closer collaboration between European technology firms and Vietnamese manufacturers, enhancing the local industry's capacity to meet international standards.
- **Integrate Sustainability Metrics in Supply-Chain Monitoring:** To elevate the commitment to environmental stewardship, it is advisable to incorporate sustainability metrics into the digital tracking systems. This will allow companies and regulatory bodies to more effectively measure, control, and report the environmental impact of industrial activities within the entire supply chain. This step is crucial for meeting both local and global sustainability goals and regulations;

- **Implement Robust Digital Mechanisms for Intellectual Property Protection:** Given the sensitive nature of intellectual property in the industry, we urge the establishment of advanced digital logging and tracking systems for all IP-related activities. In addition, adopting encryption protocols and secure data environments should be a priority to ensure that access to sensitive IP data is restricted to authorized personnel only. These measures will significantly enhance the identification and prevention of unauthorized IP use or theft; and
- **Invest in a skilled workforce to implement the standards within the industry:** Finally, one of the most important aspects is to grow a workforce. It should be able to implement and manage the high standards required for digital technologies, supply-chain management, IP protection, and cybersecurity. Partnerships with educational institutions for specialized training and continuous learning initiatives will be essential for building a workforce that is not only skilled but also adaptable to evolving industry needs.

### III. TELECOMMUNICATIONS REGULATION

Relevant authorities: Ministry of Information and Communications (MIC), National Assembly's Committee on Science, Technology and Environment (NACSTE), Vietnam Telecommunications Authority (VNTA)

#### Issue description

Vietnam's telecommunications landscape is experiencing rapid evolution, marked by a surge in innovative services such as Over-The-Top (OTT) telecom, cloud computing, and internet data centre (IDC) services. To address this trend, the Ministry of Information and Communications (MIC) and Vietnam Telecommunications Authority (VNTA) have conducted research, learned from experiences of developed countries and actively engaged with domestic and foreign enterprises and associations to propose the Government to amend the Telecommunications Law. On 24 November 2023, during the 6th session of the 15th National Assembly, the National Assembly has approved the amended Telecommunications Law with the aim of strike a delicate balance between regulating these emerging services and fostering their growth and innovation. The amended Telecommunications Law will come into effect on January 1, 2025, for the provisions regulating Over-The-Top (OTT) telecommunications services, cloud computing, and Internet Data Centers (IDC). For the remaining provisions, it will take effect on July 1, 2024. In the draft stage of the amended Telecommunications law, concerns have emerged regarding the potential integration of new services under the Telecommunications Law and the necessity for clear and distinct regulations due to their unique characteristics. However, during the drafting process, some of the concerns mentioned above have been partially addressed. Additionally, the challenges in implementing the amended Telecommunications Law emphasize the need for both the government to establish comprehensive guidelines and for businesses to enhance their understanding and compliance with the evolving legal landscape in the telecommunications sector.

#### Potential gains/concerns for Vietnam

At the draft stage of the amended Telecommunications Law, some provisions of the regulation were identified as potentially causing uncertainty for businesses providing three new services, such as: (i) Classifying Over-The-Top (OTT) telecommunications services, cloud computing services, and Internet Data Centers (IDC) services under the Telecommunications Law, subjecting them to regulations similar to those for traditional telecommunications services; (ii) The need for a "light-touch" regulatory approach for these new services. (iii) Some obligations were deemed not entirely suitable, and certain terms were not clearly defined. (iv) The obligations of businesses providing these services were distributed across various chapters, making it challenging to understand and comply with them.

Therefore, we highly recognized the dedicated effort undertaken by the Examination Agency (The NACSTE), the MIC and VNTA in addressing the concerns raised by business community in submitting for approval by the National Assembly the amended Telecommunications Law towards "light touch regulation" for these 3 services such as: (i) Providers of these 3 services are exempted from certain obligations, such as not having to contribute to the Public Utility Telecommunication Services Fund and not being required to pay telecommunication operation fees; (ii) Providers of these 3 services are not required to obtain a telecommunications license; instead, they only involve the process of registration and notification; (iii) All the rights and obligations of providers of these 3 new

services are consolidated into a single section (Section 3 - Chapter II) for the convenience and compliance of the businesses, (iv) Clear provisions regarding the non-restriction of the foreign investment capital.

When the regulations for the 3 new services come into effect on 1 January 2025, they will create a healthy and fair competitive environment among businesses in the telecommunications sector. However, to ensure the effective implementation of this policy, the government needs to issue detailed implementing decrees, including provisions on the management of providing the 3 new services across borders to users within the territory of Vietnam. The amended Telecommunications Law only outlines general principles for cross-border telecommunications service provision. Therefore, government agencies should promptly clarify these regulations to ensure they do not impose burdens on service providers and align with international practices

### Recommendations

- › The Ministry of Information and Communications and Vietnam Telecommunications Authority should soon organize the dissemination of the provisions of the amended Telecommunications Law, especially new regulations, and new adjustments to ensure that both the public and businesses have a clear and comprehensive understanding of the new policies, fostering a sense of confidence in the investment and business processes of enterprises;
- › In the process of developing the decree and guidance for the Telecommunications Law, the Ministry of Information and Communications and Vietnam Telecommunications Authority should continue to maintain an open and receptive approach. They should actively listen to the opinions of the business community, allowing for their contributions and insights in shaping the drafts.

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