

Technology, Media & Telecommunications

Proposals for the Development of Law on Data and Law on Personal Data Protection

Introduction

In February 2024, the Ministry of Public Security ("**MPS**") had published its proposals to request for the development of a **Law on Data** and a **Law on Personal Data Protection**. The Government has made the full text of these proposals available on its electronic portal, and has invited both domestic and foreign agencies, organisations and individuals to provide their feedback. The public consultation runs for 30 days from the date on which the proposals were published, i.e. until 26 March 2024 for the Law on Data and 1 April 2024 for the Law on Personal Data Protection.

The proposals were issued in line with the tasks set out in the Prime Minister's Directive No. 04/CT-TTg dated 11 February 2024, to promote the implementation of the project to develop the application on residential data and electronic identification and authentication to serve the national digital transformation for 2022 - 2025 (with a vision up to 2030).

These proposals were issued as a preliminary step for lawmakers to develop the legislation. While drafts of the laws are not yet available, the proposals include a detailed impact assessment which rationalises the requirement for these laws and include certain insight as to what may be anticipated in the draft laws to come. Any future drafts could potentially be shaped by the feedback that the Government receives in respect of the proposals.

This Update provides a high-level summary of the proposals for each of the laws, and MPS' vision and objectives (as set out in the proposals) in proposing these laws.

The Proposal for the Law on Data

The proposal for the Law on Data is available for review and public comment on the following Government webpage: <https://chinhphu.vn/du-thao-vbqpp/ho-so-de-nghi-xay-dung-luat-du-lieu-6303>.

According to the MPS' proposal, the development of the Law on Data is centred on four main policies.

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Policy 1: Regulations on constructing, developing, administering and processing data, the application of science and technology in data processing, and the State's management of data

MPS has proposed the Law on Data to contain regulations on the following matters:

- (a) data processing;
- (b) the State's management of data;
- (c) data strategy;
- (d) data management, data quality, data provision;
- (e) data protection;
- (f) identification and risk management arising from data processing;
- (g) international cooperation on data;
- (h) the "National Data Development Fund"; and
- (i) the application of science and technology in data processing, including on technologies prioritised by the State (e.g. artificial intelligence, cloud computing, blockchain, data communication, internet-of-things, big data and other modern technologies), technological development in data processing, application of technology, and the orientation for the development and use of technologies.

Without the drafts of the law, however, it remains unclear at this stage as to the interplay between the above matters in the proposed Law on Data and the Law on Personal Data Protection. Nevertheless, as MPS appears to be steering the development of both laws at the same time, overlaps or conflicts are unlikely – for example, there may be cross-references made in the Law on Data to the Law on Personal Data Protection.

Policy 2: Regulations on a National Comprehensive Database

MPS has proposed for the Law on Data be used as a foundation towards creating a National Comprehensive Database in order to integrate, synchronise, store, exploit and share data among the various existing national databases and specialised databases in Vietnam. This National Comprehensive Database is intended to be the main pillar to create the foundation for developing a digital government, promoting digital economy and establishing a digital society.

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Policy 3: Regulations on constructing, developing and use of National Data Centre infrastructure

MPS has proposed that regulations be included in the Law on Data to govern the construction, development and general use of the National Data Centre infrastructure, in order to serve, among others, the database management activities of the state agencies. This has been proposed in the face of shortcomings identified by MPS such as the insufficiency of information technology (IT) infrastructure for state agencies, lack of uniformity of databases, and security concerns on existing systems.

Policy 4: Regulations on data-related products and services

In its proposal, MPS has recognised data as being the "lifeblood" of organisations and agencies today, and therefore **data-related products and services** should be uniformly regulated. This was on the recognition that such products and services are being currently regulated by these various laws: the Law on Electronic Transactions, Law on Cybersecurity, Law on Network Information Security and the Law on Telecommunications.

The scoping of these data-related products and services remains to be seen. However, the proposal suggests that it may include products and services for electronic authentication of data (other than electronic identification), products and services analysing and synthesising data, data intermediary products and services, and data exchange.

Notably, MPS has proposed that the Law on Data be sufficiently extensive to capture products and services that are utilised not just in databases created by state agencies, but also "*databases created by other organisations and individuals*".

The Proposal for the Law on Personal Data Protection

The proposal for the Law on Personal Data is available for review and public comment on the following Government webpage: <https://chinhphu.vn/du-thao-vbqppl/ho-so-de-nghi-xay-dung-luat-bao-ve-du-lieu-ca-nhan-6312>.

At present, there only exists one dedicated data protection regulation in Vietnam: Decree 13/2023/ND-CP on personal data protection, which was enacted on 17 April 2023 ("**PDP Decree**"). Please refer [here](#) for our Legal Update which highlights the key features of the PDP Decree. Despite the enactment of this recent regulation, however, the PDP Decree was a Government decree that was enacted under the Law on Cybersecurity (2018), overseen by MPS. As result, a key shortcoming of the PDP Decree was that it did not address the fragmented data protection regulations in Vietnam – instead, layering further obligations and responsibilities on data controllers and processors.

The Government sought to address this by legislating personal data protection at a higher level of legal instrument (a "**law**"), which would allow for the unification of personal data matters. The Law on Personal

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Data Protection, when enacted, will abolish any existing laws and regulations that are inconsistent with it.

Much of the socio-economic reasons for enacting a Law on Personal Data Protection are consistent with those set out when the PDP Decree was proposed, e.g. to align with digital transformation and digital economic development, and to address subsisting concerns of data being traded, disclosed and sold.

The proposed Law on Personal Data Protection will have the following key objectives:

- (a) To unify terminologies and develop important concepts on personal data, personal data protection, data subjects, classification of personal data classification, personal data processing, data subject consent, and cross-border transfers of personal data;
- (b) To develop principles for personal data protection;
- (c) To regulate the handling violations of personal data protection regulations;
- (d) To regulate the rights and obligations of data subjects;
- (e) To regulate the consent requirements of the data subject;
- (f) To regulate the cases of processing personal data where consent is not required;
- (g) To regulate the conditions on personal data protection for organisations providing personal data processing services and services that provide organisations and personnel to protect personal data (DPO);
- (h) Impact assessments for processing personal data and cross-border transfers of personal data;
- (i) To provide measures to protect personal data, and conditions to ensure personal data protection activities; and
- (j) Completion of regulations regarding the conditions and measures to protect personal data, the tasks of specialised agencies for personal data protection, the operation of the National Information Portal on Personal Data Protection, and the establishment and tasks of personal data protection forces, including specialised taskforce in personal data protection (personal data protection department, personal data protection personnel).

Notably, based on MPS' proposal, the structure bears considerable similarity to the PDP Decree. This is perhaps unsurprising, as the drafting of the proposal is driven by MPS. For example, the proposal

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suggests that the Law on Personal Data Protection will still centre on a consent-based framework and maintain data processing and cross-border transfer impact assessments. The proposal also suggests there will be certain regulation for companies that provide services for the protection of personal data – something that is not present in the PDP Decree.

Further Information

Please feel free to reach out to our contact partners should you have queries on the above development.

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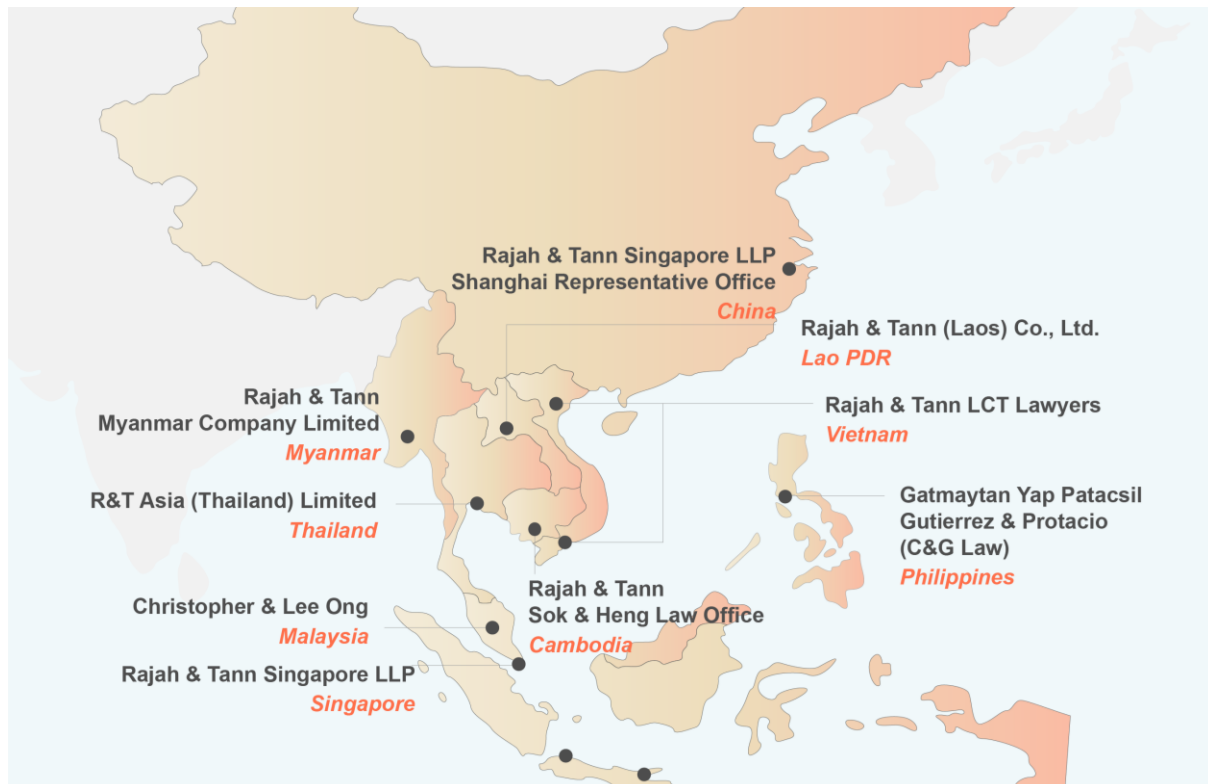
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