

VIETNAM'S NEW DATA LAW AND DRAFT IMPLEMENTING REGULATIONS – BROAD, VAGUE AND STRICT



Ha Thi Dung
Partner
dung.ha@morihamada.com



Pham Thi Ha Van
Associate
van.pham@morihamada.com

On 30 November 2024, the National Assembly of Vietnam has officially passed the new Law on Data (“**Data Law**”), which will take effect on 1 July 2025. The Data Law, which takes only one year from publication of the first draft to the finalization and passing, shows Vietnam’s commitment in bolstering data privacy and security in a wave of its currently discussed data-related regulations.

We discuss below some key issues under the Data Law and their implications.

1. Scope of application of the Data Law

The Data Law has a broad scope and governs digital data, which could be broadly interpreted to include both personal and non-personal data¹, and regulates the entire data lifecycle from collection to cross-border transfers. The followings are regulated under the Data Law:

- Rights, obligations and responsibilities of agencies, organizations and individuals related to digital data activities, including relating to cross-border data transfer;
- Establishment of National Data Center;
- Establishment of National Comprehensive Database;
- Data-related products and services.

¹ Article 3.1, according to which “digital data” is broadly defined as “data about objects, phenomena, events, including one or a combination of sounds, images, numbers, writing, symbols expressed in digital form”.

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2. Data-related entities

The Data Law presents several groups of data-related entities:

- **Data subjects** (“chủ thể dữ liệu” in Vietnamese): Agencies, organizations, or individuals reflected by data.²
- **Data owners** (“chủ sở hữu dữ liệu” in Vietnamese): Agencies, organizations, or individuals with decision-making authority regarding the development, protection, governance, processing, usage, and exchange value of their owned data.³
- **Data administrators** (“chủ quản dữ liệu” in Vietnamese): Agencies, organizations, or individuals that conduct data development, management, operation, and/or exploitation activities as required by data owners.⁴

3. Rights of Data Owner is recognised as property right

The Data Law recognises that right of Data Owner over data is a property right under civil laws. Under the Civil Code 2015 of Vietnam, a property right is classified as a type of assets and defined being as a right valued in money. Legally speaking, if right of Data Owner over data is a property right, Data Owner can exercise its ownership rights over “data rights”, including trading, selling, or otherwise transfer the ownership.

That said, it is unclear what is intention behind this recognition and how liberal Data Owner can exercise this property right. The draft Decree guiding the Data Law which have been published on 16 January 2025 (“**Draft Decree**”) fails to clarify this point.

4. State agencies’ power over private data

A substantial part of the Data Law is dedicated to regulating State agencies’ activities (i.e., their rights and obligations, and other applicable requirements)

- **Mandatory data provision:** Organizations and individuals must comply with data provision requests by government agencies, without consent needed from data subjects, in certain cases such as for response to emergencies, security threats, disasters, or to prevent riots and terrorism.⁵
- **Decryption of data:** State agencies may decrypt data without the consent of the data owner or data administrator in the above cases.⁶

² Article 3.12.

³ Article 3.14.

⁴ Article 3.13.

⁵ Article 18.2.

⁶ Article 22.4.

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It remains to be observed how the above cases will be enforced in practice, as State agencies have the right to determine when such cases occur.

5. Data classification and Cross-border data transfer

Data classification

The Data Law classifies data by its importance into the following categories:

- **Core Data:** Data directly impacting national defense, security, foreign affairs, macroeconomics, social stability, public health, and safety.
- **Important Data:** Data potentially influencing these areas.
- **Other Data:** Governed but not classified as core or important.

Specifically, data administrators of important data and core data must periodically conduct risk assessments for such data processing activities and notify specialized units on network security and information security of the Ministry of Public Security, Ministry of National Defense and relevant agencies, to coordinate in implementing data safety and security protection.⁷

The Draft Decree introduces the criteria to determine whether a data could be classified into the important data or core data. Notable, the two last criteria of important data are very broad and vague, including data which can affect on the economic development, micro-economy, infrastructure of important economic industries, or which can affect the health, life, honor, dignity, legitimate asset rights and rights of individual and organisation.

Cross-border data transfer

As a general principle, cross-border data transfers must ensure national defense, security, national interests, public interests, and legitimate rights of data subjects and data owners.⁸ The Data Law regulates the following types of transfers of important data and core data:

- Transfer of data stored in Vietnam to storage systems outside Vietnamese territory.
- Transfer of data from Vietnamese entities, organizations, or individuals to foreign entities.
- Use of overseas platforms by Vietnamese entities, organizations, or individuals for data processing.

In addition to the risk assessments, the Draft Decree contemplates the requirement imposed on the data administrators of important data and core data to make and file the assessment dossier on cross-border transfer and assessment of data. Article 12 of the Draft Decree uses inconsistently the term of data administrators and data transferor when contemplating the provisions on cross-border transfer and process of data.

⁷ Article 25.4.

⁸ Article 23.3.

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6. Data-related products and services

The Data Law introduces some requirements applicable to “data-related products and services” without defining the term itself, creating ambiguities in which other products and services may be subject to the scope of this law. The Data Law stipulates requirements to the following products and services:

- **Intermediary data products and services:**⁹ Subject to registration requirements per investment laws. It is unclear from the definition of this group¹⁰ and relevant drafting discussions which products and services are being targeted, thus further guidance and clarification need to be observed further.
- **Data analysis and synthesis products and services:** Must be registered in accordance with investment law if such products and services may harm national defense, security, social order, ethics, or public health.
For this group, the applicable registration procedures remain unclear.
- **Data platform services:** Can only be offered by public institutions or State-owned enterprises that meet service conditions and possess establishment permits.

All of these forms of data-related products and services will be further detailed in Government’s decree.

7. Applicability of the Data Law

The Data Law outlines how it interacts with other laws, both existing and future, to ensure a cohesive legal framework for data governance, especially in the context of the evolving regulations on personal data protection.

- **Existing laws:** If another law, enacted before the Data Law becomes effective, contains provisions related to data activities, those provisions will continue to be implemented as long as they do not contravene the principles of the Data Law.
- **Future laws:** For laws enacted after the Data Law becomes effective, if there are provisions that differ from those in the Data Law, it is necessary to specifically determine in those laws which provisions to implement.

While the Data Law is published, many provisions therein are still subject to further guidance of clarification from the Government, and thus require further attention to further guidance and instructions on this law.

⁹ Article 40.

¹⁰ Article 40.1: Data intermediary products and services are products and services that aim to establish commercial relationships between data subjects, data owners and users of products and services, through agreements for the purpose of exchanging, sharing, accessing data, and exercising the rights of data subjects, data owners and data users.

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