

Technology, Media & Telecommunications

## Draft Law on Data

### Introduction

On 1 July 2024, the Ministry of Public Security ("**MPS**") issued the draft Law on Data ("**Draft Law**") for public consultation.

The State acknowledges that there are currently 69 laws that regulate data and databases (including national databases and specialised databases) or which contain regulations related to data (e.g. Law on Electronic Transactions, Law on Cybersecurity, Law on Network Information Security and Law on Information Technology). It is for this reason that the State saw the need to develop a **consolidated law** to regulate all types of data, including personal data.

This Update provides a high-level summary of the key provisions provided in the Draft Law.

### Scope

The Draft Law regulates the following matters:

- (a) the construction, development, processing, and management of data;
- (b) the application of science and technology in data processing;
- (c) the National Comprehensive Database;
- (d) the National Data Centre;
- (e) data products and services;
- (f) state management of data; and
- (g) responsibilities of agencies, organisations, and individuals related to data activities.

Notably, the Draft Law is expected to have extraterritorial scope, regulating both offshore and onshore entities that are involved in data activities in Vietnam.

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## Data Classification

The Draft Law introduces a detailed mechanism by which data is to be classified. It requires state agencies, political organisations, and socio-political organisations to establish a data classification system based on the requirements for managing, processing, and protecting data, as follows:

- (a) **Data classified by the nature of data sharing:** Shared data, private data or open data;
- (b) **Data classified by subject of the data:** Personal data or non-personal data;
- (c) **Data classified by method of creation:** Original data or aggregated data; and
- (d) **Data classified by the importance of data content and the level of harm if altered, destroyed, leaked, forged, used, or shared illegally:** Important data, core data, or other data.

These classifications define the specific responsibilities associated with handling the data. For example, important data or core data may be subject to transfer restrictions under the Draft Law.

## Provision of Data to State Agencies

### Provision of Data

The Draft Law requires organisations and individuals to declare and provide data to state agencies in special cases on request. These include cases where it is necessary to respond to a public emergency or where the lack of available data prevents the state agency from completing a specific task for the public interest as clearly defined by law and the state agency cannot obtain the data through other alternative measures.

### State Agencies' Responsibilities

When requesting data from organisations and individuals, state agencies will be subject to specific responsibilities and obligations. For example:

- (a) The state agency must specify the data requested, explain the purpose and duration of use, specify the basis for the request, and set the timeline for the data to be provided. The Draft Law suggests that the recipient may contest the request, including withdrawing the request.
- (b) The Draft Law contains specific requirements concerning the form and content of the data requests. Requests must be clear, proportionate to the state agency's needs, and respect the legitimate purpose of the data holder.

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- (c) The state agency must implement technical measures and protect the legal rights and interests of the data subjects and the data providers. It also needs to destroy the data as soon it is no longer necessary for the use purpose.

## Cross-Border Transfers of Core Data and Important Data

The Draft Law prescribes that data classified as core data or important data must be evaluated and approved by a competent authority before the data can be provided or transferred outside of Vietnam. The Prime Minister decides on the provision or transfer of national core data, while MPS will evaluate and decide on the provision or transfer of important data.

Data transferors need to also pass data safety evaluation conducted by MPS and sign a contract with the foreign transferee in a form developed by MPS. Therefore, the Draft Law contemplates a statutory data transfer agreement that will apply.

## Risk Prevention Measures in Data Processing

The Draft Law contains general requirements for risk prevention in data processing. This includes requirements on regular back-ups, proper encryption and authentication measures, access and restriction rules, security software (firewalls, antivirus, anti-malware, etc.), risk assessments, data incident response plans, and training.

These measures appear to be more expansive and targeted compared to those set out in the Law on Network Information Security. However, as it stands, they are still couched in relatively general terms in the Draft Law, and it is possible that (once passed), further elaboration on the extent of these measures needed may be enacted.

## Data Products and Services

The Draft Law introduces regulations for various data products and services, which are generally those products and services related to data processing for commercial purposes.

Sectoral laws will continue to govern these products and services in their respective sectors (e.g. telecommunications).

However, the Draft Law specifically regulates products and services in the field of data intermediaries, data analysis and synthesis, data exchange platforms, and electronic authentication of data not linked to an electronic identity. The Draft Law requires providers of these products/services to be Vietnamese enterprises and obtain certain licences from the Government.

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## **Further Information**

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

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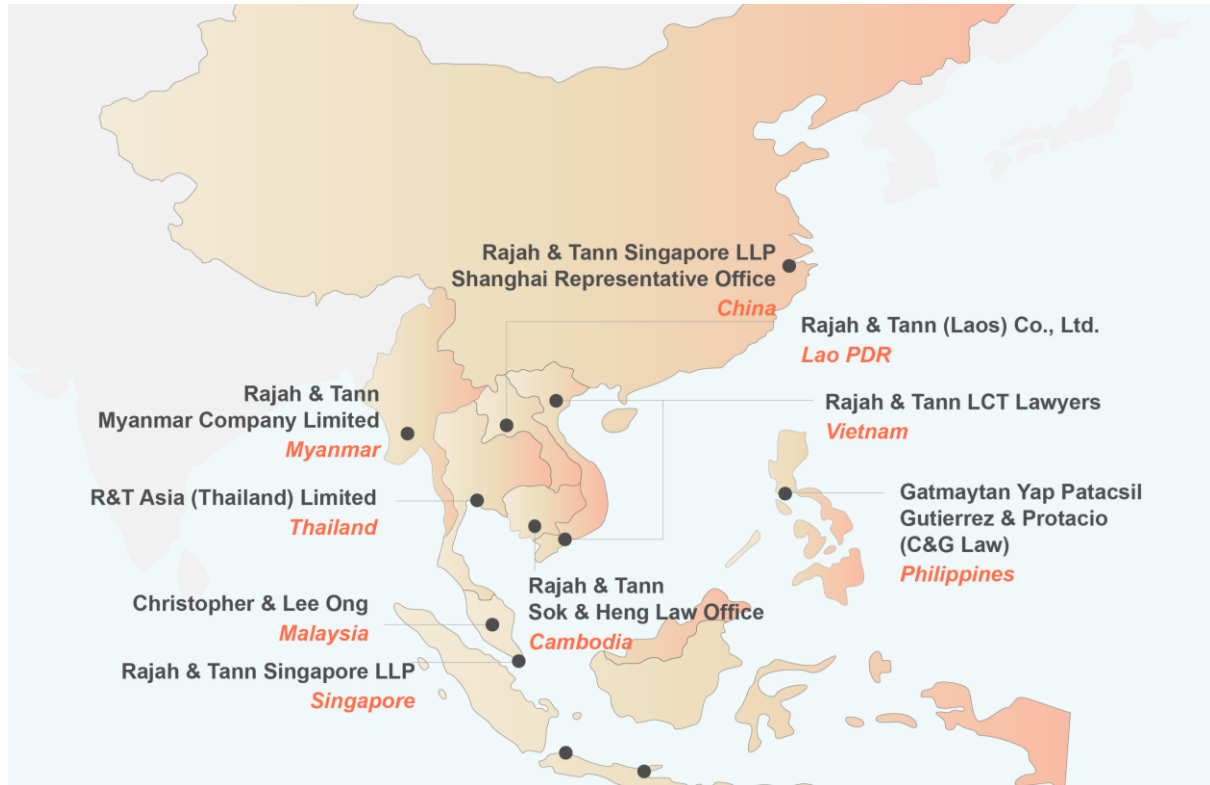
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