

Draft Decree on amendment of Decree 72 on management, provision and use of Internet Services and Online Information

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Read in this issue:

→ Draft decree on amendment of Decree 72

- KEY CONTENT
 - Cross-border provision of information
 - Data center services and related business conditions
 - Licenses for online games
 - Classification of social network and relevant licensing procedures
 - Child protection in cyberspace
 - Our conclusions

→ Draft decree on amendment of Decree 72

Legal framework on Internet services and online information is mainly regulated in Decree No. 72/2013/ND-CP dated 15 July 2013 and its amendments in Decree No. 27/2018/ND-CP dated 1 March 2018, amending Decree 72 on management, provision and use of Internet Services and Online Information (“DECREE 72”). However, due to the significant development of information technology and people’s modern routine on using the Internet, current regulations revealed limitations and inadequacies, requiring the legal framework on this subject to be improved and completed.

On 31 December 2020, the Government issued Resolution 193/NQ-CP, approving the development of the legal framework in this circumstance. Subsequently, the Government has just released a draft Decree to amend and supplement certain regulations on this subject for public comments (“DRAFT DECREE”). This month’s client alert will provide key contents currently stipulated in the Draft Decree as follows.

→ Draft decree on amendment of Decree 72

Key content

Cross-border provision of information

The Draft Decree incorporates and develops existing regulations on cross-border provision of public information in accordance with Circular No. 38/2016/TT-BTTTT dated 26 December 2016, issued by the Ministry of Information Communication (“MIC”). The spirit of regulation in the Draft Decree is that any organization and individual (including offshore social networks) providing cross-border information to users in Vietnam or access from Vietnam (hereinafter called “foreign information providers”) shall be controlled by the Vietnamese laws. All information in this regard shall not fall within any restricted purposes which may cause harm to society or to the Vietnamese Government such as encouraging violence, spreading fake news, advertising prohibited products, etc.

In case of violation, in principle, the foreign information providers shall cooperate with the MIC and take necessary actions to remove the illicit information/services within 24 hours, and within 3 hours for livestreaming videos, subject to written request(s)/warning(s) from the MIC. Otherwise, the MIC is entitled to conduct necessary technical methods to block or remove the illicit information.

Furthermore, if foreign information providers rent cloud space to store digital information in Vietnam, or have frequent access in Vietnam from 100,000 people or more per month, they are required to (i) notify the MIC; (ii) block and remove illicit information/services. The party providing

storage for rent shall conduct the periodical report to the MIC, and is obligated to notify the MIC in case of identifying any violation.

However, it appears that the Draft Decree does not provide any indication on specific mechanisms or applicable sanctions if the foreign information providers do not comply or cooperate with the MIC. The current Draft Decree neither provides specific regulations on how to deal with personal data protection of the users, as this subject will be controlled by a separate regulation.

Data center services and related business conditions

The Draft Decree introduces a definition of data center services which includes sub-services such as server rental services, rental services for data center/data storage space, cloud computing services.

Data center services are treated as conditional business lines. In order to obtain the business license (sub-license) from MIC, the providers of data center services shall

- a. meet the relevant technical standards in designing, building, and operating the data center;
- b. have software and applications in place to manage and store customer information; and
- c. establish a procedure to verify information and to protect customers’ data.

The contract on providing data center services shall contain the compulsory information/contractual terms such as rights and obligations of the contracting parties, terms of contract, information on restricted acts, standards and conditions of the services, etc.

Foreign organizations/individuals operating cross-border data service centers shall send a written notification to the MIC before starting to provide such services in Vietnam.

Licenses for online games

According to the current regulation (Decree 72), service providers of G1 games must obtain a master license for Providing Electronic Game Services for themselves, and an additional approval for each G1 game. Service providers of G2, G3, G4 games must obtain a Certificate of Electronic Game Registration for themselves, and additionally notify the MIC for each G2, G3, G4 game.

Under the Draft Decree, online game service providers are not required to obtain a master license for themselves before providing game services. They are required to obtain a License for G1 Game Dissemination (in Vietnamese: *Giấy phép phát hành trò chơi điện tử G1*) for each G1 game and a Certificate for Game Dissemination Registration (in Vietnamese: *Giấy chứng nhận phát hành trò chơi điện tử*) for each G2, G3, G4. The Draft Decree also imposes additional requirements and conditions on the eligibility for the relevant licenses for each online game.

Payment support services in online games are all support activities for online game service providers to collect money from players, including intermediary service payment, payment services via bank and other forms of payment. The payment system for online games must be located in Vietnam.

Controlling the playtime of players from 12 AM to 12 PM every day is compulsory. The online game providers shall ensure that the total playing time for players aged 18 or above, will not exceed 180 minutes a day for each game; and 180 minutes a day for all games for players under the age of 18.

Classification of social network and relevant licensing procedures

Article 20 of the Draft Decree also provides the new definition of “multi-service social network – in Vietnamese: *Mạng xã hội đa dịch vụ*”. A multi-service social network is defined as a “social network which integrates other types of services in the same platform to optimize the business operations

and services on such platform”. This is a conditional business line which requires sub-licenses, certificate of eligibility for business.

Furthermore, under the Draft Decree, social networks are now categorized into:

- a. Offshore social networks; and
- b. Onshore social networks, divided into
 - social networks with high interaction (i.e., more than 1 million interactive users in Vietnam per month, or more than 10,000 registered users per month); and
 - social networks with low interaction (i.e., less than 1 million interactive users in Vietnam per month).

In terms of licensing procedures, the providers must obtain a License for the provision of social networks for the social networks with high interaction, and send a written notification to the MIC for the social networks with low interaction.

Furthermore, please note that only social network providers with proper registration of license or notification with MIC are entitled to collect service fees and to provide livestream services. With respect to the foreign organizations and individuals providing cross-border information in the form of social networks, livestreaming and profit generating activities are permitted to accounts, community pages and content channels in Vietnam who notified their contact information to the MIC.

Child protection in cyberspace

The Draft Decree further introduces definitions on “children abuse acts in cyberspace”, and “information harmful for children in cyberspace”.

Additional measures are applicable to both, offshore and onshore social networks, for child protection (applicable to social networks having a usual access number from Vietnam exceeding one million) as follows:

- Display a warning for any content inappropriate for children;
- Set up a mechanism to alert content harmful to children or child abuse acts, and a proper process to handle harmful content; share data on the total number of complaints and processing results with the MIC quarterly;
- Block and filter content harmful to children, block the accounts/users promoting child abuse acts;
- Perform age registration upon the registration of a user account and set up the measures to help

parents monitor the activities of children in cyberspace (controlling the time children spend using social networks and limit it to a maximum of 120 minutes/day).

Given that Decree 72 already mentioned child protection, it seems that the Draft Decree accords more weight to child protection, introducing specific measures such as age verification, content filter and the removal of harmful information in order to identify the information which may cause harm to children.

Our conclusions

Upon official issuance of the amendments on management, provision and use of Internet Services and Online Information, it may cause substantial impact on tech companies, including offshore social network service providers, online game providers, data center/could services providers, etc., especially with regard to the licensing and notification procedures in Vietnam. However, we believe that the current Draft Decree does not clearly indicate specific mechanism for penalties or sanctions to be imposed for violations against the regulations. It should therefore be further considered and developed.

The Draft Decree is currently published by the Government on its website for public comments. You may download the full Draft Decree (in Vietnamese) from the Vietnam Government Portal and contribute your opinions via this link: http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVan-Ban?piref135_27935_135_27927_27927.mode=displayreply&piref135_27935_135_27927_27927.id=4382

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