

Draft regulations on administrative penalties for violations of cybersecurity and personal data protection

Legal Update | June 2023

This Update highlights the following key points:

- ▶ The Draft Decree on Cybersecurity Administrative Penalties (Draft DCAP) is tentative to take effect from 1 December 2023.
- ▶ The Draft DCAP provides administrative penalties for violations of the personal data protection compliance requirements applicable to data controllers, processors, and controlling-processing entities.
- ▶ Various measures may be applied to organizations/enterprises for relevant violations of personal data protection.
- ▶ The penalty calculated based on the total revenue for violations of regulations on personal data protection still be kept under the Draft DCAP.

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Although more than four years have passed since the Vietnam's Cybersecurity Law came into effect on 1 January 2019, there was never any integrated legislative document on administrative penalties for violations of regulations on cybersecurity and personal data protection (PDP). As from 17 April 2023 when Decree No. 13/2023/ND-CP on PDP (Decree 13) was officially issued, the Ministry of Public Security (MPS) took proactive actions to complete and publish the third version of the Draft DCAP for public consultation. The deadline for submitting comments on the Draft DCAP is 20 June 2023.

Decree on Cybersecurity Administrative Penalties, together with the Cybersecurity Law, Decree 13, and the Decree No. 53/2022/ND-CP guiding the Cybersecurity Law issued by the Government on 15 August 2022 (Decree 53), are meant to form a comprehensive set of laws on cybersecurity and PDP. This Draft DCAP provides administrative penalties for violations of the PDP compliance requirements applicable to data controllers, processors, and controlling-processing entities, including but not limited to the violations of the general principles on PDP, violations of data subject's rights, or failure to formulate or retain the impact assessment of data processing/data transfer activities.

If the Draft DCAP becomes officially effective from 1 December 2023, as currently proposed by the MPS, the following measures may be applied to organizations/enterprises for relevant violations of PDP as set forth in Decree 13:

- ▶ Monetary fines (explained in detail below)
- ▶ Temporary withdrawal of business and professional licenses for 1 to 3 months
- ▶ Confiscation of exhibits and means of administrative violations
- ▶ The following remedial measures:
 - ▶ Being forced to take certain actions (such as, ceasing the processing of personal data, destroying or deleting to the extent of not being able to recover the personal data, notifying of violations of regulations on PDP, etc.)
 - ▶ Returning or submitting illegal profits obtained from committing violations
 - ▶ Public apology on the mass media

The monetary fine measure is the initial administrative penalty to be considered for violations relating to PDP. Accordingly, organizations/enterprises which violate relevant laws on PDP may face monetary penalties from VND40 million (approximately US\$1,720) to VND200 million (approximately US\$8,600). Subject to the nature, severity, consequences, and the tendency of the violated act, the violated entity may also be fined up to 2-5 times of the basic monetary fine (e.g., for violation on the regulations on cross-border transfer of personal data which leads to the loss of personal data of from 100,000 to less than 5,000,000 Vietnamese citizens).

Similar to the second version of the Draft Decree on PDP and the second version of the Draft Decree on Cybersecurity Administrative Penalties, the lawmakers still reflect their consistent intention to keep the penalty calculated based on corporate income for violations of regulations on PDP under the Draft DCAP. In particular, for serious cases such as the illegal purchase, processing, or transfer of personal data from the second times, the violated entity may be fined up to 5% of its total revenue in the preceding fiscal year in Vietnam.

Given the tight timeline of just less than one month to the effective date of Decree 13 and less than six months to the tentative effective date of the Draft DCAP, it is highly recommended that companies should proactively take prompt actions to ensure compliance with Vietnam's evolving regulatory framework on cybersecurity and PDP to avoid the risk of facing adverse enforcement actions in the future.

Please refer to our suggestion for the required actions for both local and offshore entities involving in the collection and processing of personal data in our Legal Update in May 2023 on Decree 13 [here](#).

Contacts

Hanoi Office

Anh Thuy Pham | Senior Manager
EY Law Vietnam Limited Liability Company
anh.thuy.pham1@vn.ey.com

Thanh Tat Vu | Senior Manager
EY Vietnam Cybersecurity Services Company Limited
thanh.t.vu@vn.ey.com

Minh Tran Hai Le | Manager
EY Vietnam Cybersecurity Services Company Limited
minh.le2@vn.ey.com

Japanese Business Services
Takaaki Nishikawa | Director
Ernst & Young Vietnam Limited
takaaki.nishikawa@vn.ey.com

Korean Business Services
Kyung Hoon Han | Director
Ernst & Young Vietnam Limited
kyung.hoon.han@vn.ey.com

Ho Chi Minh City Office

Michael Beckman | Partner
EY Law Vietnam Limited Liability Company
michael.beckman@vn.ey.com

Thach Thi-Cam Tran | Senior Manager
EY Law Vietnam Limited Liability Company
thach.cam.tran@vn.ey.com

Robert Tran | Partner
EY Vietnam Cybersecurity Services Company Limited
robert.tran@vn.ey.com

Japanese Business Services
Takahisa Onose | Partner
Ernst & Young Vietnam Limited
takahisa.onose@vn.ey.com

Korean Business Services
Dong-ho Park | Director
Ernst & Young Vietnam Limited
dongho.park@vn.ey.com

Chinese Business Services
Owen Tsao | Director
Ernst & Young Vietnam Limited
owen.tsao@vn.ey.com

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