



Special Alert

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Vietnam's Government Issues New Regulations Prohibiting "Fake News"

1. On 3 February 2020, the Government of Vietnam has issued Decree No. 15/2020/ND-CP on administrative sanctions in the sectors of postal, communications, radio frequency, information technology and electronic transactions ("**Decree 15**"), which came into effect on 15 April 2020 and superseded Decree No. 174/2013/ND-CP ("**Decree 174**"). Decree 15 adds remarkable regulations on administering the use of a social network platform ("**SNP**") and information transmitted thereon and clearly assigning obligations of SNP users as separate from a social network service provider ("**SNSP**").
2. The following are the main points of Decree 15, of which both SNP users and SNSPs should be aware:

The subjects of application

While Decree 174 did not provide an explicit scope of application, Decree 15 provides a detailed list in Article 2. Accordingly, *foreign organizations and individuals* operating in the specific prescribed sectors¹ and conducting certain violations, as set out under Decree 15, shall be subject to its administrative sanctions under this new decree.

New regulations applicable to the violations of SNP users' obligations

- (a) Decree 15 regulates the administrative sanctions applied to violations related to obligations of SNP users. In particular, Article 101 sets out violating conduct when using an SNP, which is subject to a monetary fine of up to VND20 million (for organizations) or VND10 million (for individuals), and additional remedial measures

¹ Prescribed sectors as set out under Article 2.2 of Decree 15 comprises of, inter alia, information technology which includes social network activities.

consisting of the compulsory removal of violating information or content.

The sanction applies to SNP users who post or share the following content on an SNP:

- (i) Fake news, false information, or information that distorts, slanders or offends the reputation of other entities;
 - (ii) Information encouraging superstition, depravity, or that is objectionable to the fine customs and traditions of Vietnam;
 - (iii) Information describing gore or accidents in detail;
 - (iv) Fabricated information that causes panic in the community, encourages violence, crimes, social vices or gambling-related activities;
 - (v) Art works or publications that infringe intellectual property rights of others, or which are not licensed or are prohibited to be publicized;
 - (vi) Advertising or sharing of prohibited goods or services;
 - (vii) Images of the map of Vietnam which do not or incorrectly express national sovereignty; and
 - (viii) Links to prohibited contents.
- (b) The act of using an SNP to disclose national secrets or personal secrets of individuals or other secrets is subject to a monetary fine of up to VND30 million (for organizations) or VND15 million (for individuals) and additional remedial measures consisting of compulsory removal of violating information.

Increase of the fines for the violations related to the SNSP's obligations

- (a) Under Article 100, the average rate of monetary sanctions is generally increased. For instance:
- (i) Violations of an SNSP as to technical requirements (i.e. not providing personal information of SNP users related to crime or terrorism, etc.) may be fined up to VND50 million instead of VND30 million;
 - (ii) Violations of an SNSP for proactively providing prohibited contents in accordance with the laws may be fined up to VND70 million instead of VND50 million; or
 - (iii) The act of using personal data of other persons on the SNP without their permission may be fined up to VND50 million instead of VND10 million. The data subjects covered by this fine has been expanded by the replacement of "social network users" with the term "other persons". This means that an SNSP must obtain permission to use the personal data of any individual referred to on the SNP, not just of SNP users.
- (b) The scope of application under Article 100 has also been modified. In particular, its

title is quoted as “**Article 100. Violations on obligations of organizations, enterprises establishing social network**”, while under Decree 174, the underlined phrase was specified as “**organizations, enterprises providing social network service**”. Under Decree 72, organizations and/or enterprises are allowed to establish social network only when having the license issued by the Ministry of Information and Communications (the “**MIC**”). In order to obtain such a license, one of the key conditions is that the organization or enterprise in question must be duly incorporated under the laws of Vietnam, i.e. a Vietnam-based entity. Therefore, the new title of Article 100 of Decree 15 seems to limit its subject of application to onshore entities only, which is slightly contrary to the subject of application of the whole Decree 15 (as mentioned above).

3. During the COVID-19 pandemic, the Government has been fighting the spread of the virus alongside with the spread of fake news or rumours on SNPs. With Decree 15 coming into effect, hopefully the SNP users will be more aware of the seriousness and consequences of their acts before posting anything on a SNP.

Additionally, in the context where legal framework for personal data protection is still under development, the issuance of Decree 15 makes a great contribution in keeping a safe and secure online environment, especially on social networks, where the rights to freedom of speech are usually distorted and abused.

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