



# Special Alert

February 2021

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## Vietnam Government Plans to Tighten the Cross-border Advertising Rules

Cross-border advertising is ultimately governed by the Law on Advertising No. 16/2012/QH13, as amended by the Law No. 35/2018/QH14 (the “**Advertising Law**”), and Decree No. 181/2013/ND-CP dated 14 November 2013 providing details for the implementation of a number of articles of the Advertising Law (“**Decree 181**”). Practical application, however, has found that the existing provisions for cross-border advertising services in Vietnam are either infeasible or inconsistent or insufficient and has caused difficulty and ineffectiveness in its management. To alleviate these problems, the Government is likely to amend Decree 181.

Accordingly, a draft decree to amend a number of articles of Decree 181 (the “**Draft Decree**”) has been submitted by the Ministry of Information and Communications (the “**MIC**”) and published at:

[http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?\\_piref135\\_27935\\_135\\_27927\\_27927.mode=displayreply&\\_piref135\\_27935\\_135\\_27927\\_27927.id=3785](http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?_piref135_27935_135_27927_27927.mode=displayreply&_piref135_27935_135_27927_27927.id=3785).

The Draft Decree proposes to remove the impractical provisions from Decree 181 and to focus on the clarification of responsibilities in respect of cross-border advertising in Vietnam.

The Draft Decree removes Article 13.2 of Decree 181 which requires Vietnamese advertisers to contract with licensed Vietnamese advertising service providers for the display of their advertisements on cross-border advertising platforms. It also removes Article 14.2 of Decree 181, which requires foreign cross-border advertising service providers to notify their advertising in writing to the Ministry of Culture, Sports and Tourism (the “**MOCST**”) for approval 15 days prior to running a particular advertisement. In the Draft Decree’s amended Article 13, the competent authority for cross-border advertising is the MIC.

The Government also wants to extend its reach in defining foreign cross-border advertising service providers as foreign organizations and individuals providing cross-border advertising services on cyberspace with revenues generated from Vietnam through websites, social networks, or applications with access from Vietnam or users in Vietnam. This would define almost any international advertising service providers within its scope and make them subject to the following, onerous, requirements:

- ✓ to comply with the law and regulations of Vietnam on advertising, management, provision and use of internet services and information on cyberspace;
- ✓ to pay taxes in accordance with the tax laws of Vietnam;
- ✓ to notify the MIC of certain information, including registered and transaction names, registered address of the platform's owner, place of main server providing services, contact details in Vietnam;
- ✓ to proactively review advertising products for compliance with Article 8 of the Advertising Law and Article 8.1 of the Cybersecurity Law No. 24/2018/QH14 dated 12 June 2018;
- ✓ to have solutions to ensure that advertising distributors in Vietnam are able to control, detect and eliminate cross-border advertising products in violation of the Advertising Law;
- ✓ to implement the prevention, removal and handling of violating information as requested by the MIC and other competent authorities; and
- ✓ to submit regular reports and extraordinary reports as requested by the MIC on their cross-border advertising activities in Vietnam. Regular reports shall be submitted for each 12-month period by 15 December of each year.

For Vietnamese parties involved in cross-border advertising activities, in addition to responsibilities as provided in Decree 181, persons conducting the business of advertising services will be required to submit to the MIC regular reports on their cross-border advertising activities for each 12-month period by 15 December of each year.

The Draft Decree requires advertising distributors to maintain the ability to detect and remove advertising products in violation of the Advertising Law provided by foreign advertising service providers and not to post and display advertising products from foreign cross-border advertising service providers committing violations of Vietnam's laws upon notification in writing by the competent authorities. Advertisers under the Draft Decree shall not be allowed to display their advertising products on advertising platforms violating Vietnam's laws and will be responsible for their advertising products in case of signing advertising contracts with foreign service providers seeking to conduct cross-border advertising in Vietnam. They will, however, have the right to require such advertising service providers to remove their advertising products embedded in content if such content violates the laws of Vietnam.

The Draft Decree is now in the stage of collection of public opinion for consideration.

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