



SpecialAlert

June 2023

www.indochinecounsel.com

Navigating Vietnam's Personal Data Protection Decree: Compliance Checklist

| | |
|--------|--|
| A05 | The Department of Cybersecurity and High-tech Crime Prevention (A05) under the MPS |
| GDPR | General Data Protection Regulation |
| MPS | Ministry of Public Security of Vietnam |
| PDPD | Decree No. 13/2023/ND-CP dated 17 April 2023 of the Government on Personal Data Protection |
| PDPIA | Personal Data Processing Impact Assessment |
| OPDTIA | Offshore Personal Data Transfer Impact Assessment |

| No. | Compliance Classification | Compliance Action Required | | | | Description | Exceptions |
|-----|---------------------------|--|--------------------------------------|--|-------------|--|------------|
| | | Data Controller | Data controlling & processing entity | Data Processor | Third Party | | |
| 1. | ROLE DETERMINATION | <ul style="list-style-type: none"> Select a Data Processor with a clear mandate; Only work with the Data Processor with appropriate protection measures. | N/A | <ul style="list-style-type: none"> Enter into a data processing contract with the Data Controller; Process personal data in accordance with the signed contract. | N/A | <p>Analogous to the EU's GDPR, the PDPD recognizes different roles of data handlers and assigns respective responsibilities to each role as follows:</p> <ul style="list-style-type: none"> Data Controller: an organization / individual that decides on the purposes and means of processing personal data. Data Processor: an organization / individual that processes raw data on behalf of the Data Controller, through a contract or agreement with the Data Controller. Data controlling & processing entity: an organization / individual that simultaneously decides on the purpose and means, and directly processes personal data. Third Party: an organization / individual other than the Data Subject, Data Controller, Data Processor, Data controlling & processing entity, who is | N/A |

| No. | Compliance Classification | Compliance Action Required | | | | Description | Exceptions |
|-----|--------------------------------------|--|--------------------------------------|----------------|-------------|---|---|
| | | Data Controller | Data controlling & processing entity | Data Processor | Third Party | | |
| | | | | | | permitted to process personal data. | |
| 2. | TYPES OF PERSONAL DATA DETERMINATION | <ul style="list-style-type: none"> Determine the type of data the company is handling. Develop a data management and classification mechanism for each type of personal data. | | | | The PDPD classifies personal data into two types: (i) Basic personal data, and (ii) Sensitive personal data. | N/A |
| 3. | CONSENT REQUIREMENTS | <ul style="list-style-type: none"> Evaluate if data processing necessitates consent from the Data Subject. Create a mechanism so that the Data Subject can express / withdraw their consent, ensuring the forms demonstrate compliance. The Data Subject must be informed of the potential consequences and damages resulting from the withdrawal of consent. | | | | <ul style="list-style-type: none"> The consent of the Data Subject applies to all activities involved in the processing of personal data, save for the cases specified in Exceptions. Special cases requiring consent from stakeholders other than the Data Subject for data processing, these include: <ul style="list-style-type: none"> (i) Processing of children's data; (ii) Cases involving persons declared missing or deceased. A valid consent relies on: <ul style="list-style-type: none"> (i) The voluntary participation of the Data Subject; (ii) The Data Subject being fully informed of: data type, processing purpose(s), parties involved in the data processing, and the Data Subject's rights and | <p>Circumstances where personal data processing does not require consent of the Data Subject include:</p> <ul style="list-style-type: none"> Immediate processing of personal data is necessary to protect the life and health of the Data Subjects or others (required to provide proof); Disclosure of personal data as required by laws; Data processing conducted by competent state agencies in response to emergencies, threats to national security and defense; fighting riots, terrorism, and criminals, significant disasters, or dangerous epidemics in accordance with the |

| No. | Compliance Classification | Compliance Action Required | | | | Description | Exceptions |
|-----|---------------------------|----------------------------|--------------------------------------|----------------|-------------|--|---|
| | | Data Controller | Data controlling & processing entity | Data Processor | Third Party | | |
| | | | | | | <p>obligations.</p> <ul style="list-style-type: none"> ▪ Consent of the Data Subject: <ul style="list-style-type: none"> (i) must be clear and specific; (ii) must be articulated in a format that can be printed or reproduced in text, including electronic or verifiable formats; (iii) conducted for a single purpose. If there are multiple processing purposes, the Data Subject must be able to consent to one or multiple specific purposes; (iv) can be withdrawn, and this withdrawal of consent must be expressed in a format that can be printed or reproduced in writing; (v) cannot be assumed from silence or non-response. | <p>provisions of law;</p> <ul style="list-style-type: none"> ▪ Performing contractual obligations of the Data Subjects to relevant entities; ▪ Facilitating the operation of state agencies prescribed by specialized laws; ▪ Processing of personal data derived from public records by competent agencies. |

| No. | Compliance Classification | Compliance Action Required | | | | Description | Exceptions |
|-----|--|--|--------------------------------------|----------------|---|--|------------|
| | | Data Controller | Data controlling & processing entity | Data Processor | Third Party | | |
| 4. | NOTIFICATION OF PROCESSING PERSONAL DATA | <ul style="list-style-type: none"> Determine whether the data processing case necessitates notification to the Data Subject. Formulate new privacy policies, or review or update existing ones to comply with new notification requirements. | N/A | N/A | <p>The contents of the notification to the Data Subjects of personal data processing ("Notification Contents") shall include the following:</p> <ul style="list-style-type: none"> the purpose of processing; the type of personal data used in the processing; the method of handling; the information about other organisations and individuals involved in the processing; the potential consequences and unforeseen damage that may occur; the start and end times of data processing. | <ul style="list-style-type: none"> The Data Subject has clear understanding and consent to the Notification Contents before agreeing to the Data Controller, the Controller and Processor of Personal Data to collect personal data; Processing of personal data by competent state agencies for the purpose of facilitating the operation of state agencies in accordance with the law. | |
| 5. | PROVISION OF PERSONAL DATA | <ul style="list-style-type: none"> Provide the personal data to the Data Subject within 72 hours of the request, unless otherwise determined by law. Notify and instruct the requesting subject to the competent authority, or clearly inform them of the inability to fulfill the request. Inform the requesting | N/A | N/A | <p>The Data Subject has the right to request the Data Controller, and Data controlling & processing entity (directly or via authorization) to provide him/her with his/her own personal data.</p> | <p>Fulfillment of the listed request of the Data Subject shall not apply in the following circumstances:</p> <p>Data provision exemptions:</p> <ul style="list-style-type: none"> The provision causes harm to national security and social order and safety; The provision may affect the safety, physical or mental health of others; | |

| No. | Compliance Classification | Compliance Action Required | | | | Description | Exceptions |
|-----|--|---|---|--|-------------|---|---|
| | | Data Controller | Data controlling & processing entity | Data Processor | Third Party | | |
| | | subject about time limit, location, form of data provision, disbursement costs, payment methods, and terms. | | | | | <ul style="list-style-type: none"> The Data Subject does not give consent for the provision, representation or authorization of the receipt of personal data. |
| 6. | CORRECTION OF PERSONAL DATA | <ul style="list-style-type: none"> Corrections shall be made as soon as practicable, or in accordance with specialized law. In case of impossibility, the Data Subject shall be notified after 72 hours of the request. | | <ul style="list-style-type: none"> Make corrections upon receiving written consent from the Data Controller and Data controlling & processing entity. | | The Data Subject has the right to access, view, and correct their collected personal data, or to request to have their collected personal data corrected. | <p>Data deletion exemptions:</p> <ul style="list-style-type: none"> Deletion is not permitted by the laws; Personal data is processed by competent state agencies for operational purposes in accordance with the law; |
| 7. | STORAGE OF PERSONAL DATA | <ul style="list-style-type: none"> Data should be stored for an appropriate period for the purpose of data processing, unless otherwise provided by law. Data should be stored in a format suitable to your activity. | | | | | <ul style="list-style-type: none"> Personal data has been made public in accordance with the law; Personal data is processed to meet legal requirements, for scientific research, and for statistics as prescribed by law; |
| 8. | RESTRICTION, DELETION OF PERSONAL DATA | <ul style="list-style-type: none"> Address the request of the Data Subject within 72 hours, unless otherwise determined by law. | <ul style="list-style-type: none"> Delete and return all personal data to the Data Controller after the completion of the data processing. | N/A | | The Data Subject has the right to request for data deletion, or restriction or objection to data processing. | <ul style="list-style-type: none"> In states of emergencies or threats to: <ul style="list-style-type: none"> (i) national security and defense; fighting riots, terrorism, and criminals, significant |

| No. | Compliance Classification | Compliance Action Required | | | | Description | Exceptions |
|-----|----------------------------------|--|---|---|-------------|--|--|
| | | Data Controller | Data controlling & processing entity | Data Processor | Third Party | | |
| | | | | | | | disasters, or dangerous epidemics in accordance with the provisions of law; (ii) the life, health, or safety of the Data Subject or others. |
| 9. | BREACH NOTIFICATION REQUIREMENTS | <ul style="list-style-type: none"> Cooperate with the A05, the MPS in handling the violation. Be liable to the Data Subject for damages caused by the processing of personal data. | <ul style="list-style-type: none"> Notify the A05 within 72 hours upon the occurrence of the violation. If notification cannot be done within the required time, reasons for the belated notice must be given. | <ul style="list-style-type: none"> Notify the Data controller as soon as possible upon detecting a violation of personal data protection regulations. | N/A | <p>The notification of violation is required to consist of the following content:</p> <ul style="list-style-type: none"> Details of the nature of the breach (time, place, behaviour, organization, individual, types of personal data and quantity of relevant data); Contact details of the personnel in charge of data protection / organizations or individuals responsible for personal data protection; A description of potential consequences / damages; and measures taken to address and minimize such harms. | N/A |

| No. | Compliance Classification | Compliance Action Required | | | | Description | Exceptions |
|-----|--|--|--------------------------------------|---|-------------|--|------------|
| | | Data Controller | Data controlling & processing entity | Data Processor | Third Party | | |
| 10. | PERSONAL DATA PROCESSING IMPACT ASSESSMENT ("PDPIA") | <ul style="list-style-type: none"> Prepare and maintain the PDPIA dossier ("PDPIA Dossier") from the time of commencement of the processing of personal data. | | <ul style="list-style-type: none"> Prepare and maintain the PDPIA Dossier in case of performance of a contract with the Data Controller. | N/A | <p>The PDPIA Dossier:</p> <ul style="list-style-type: none"> is required to comprise certain mandatory content under the PDPD; must always be available for inspection and evaluation by the MPS. | N/A |
| | | <ul style="list-style-type: none"> Submit the PDPIA Dossier to the A05 within 60 days from the start of the processing. Update the A05 on any changes to the content of the PDPIA Dossier. | | | | | |
| 11. | OFFSHORE PERSONAL DATA TRANSFER | <p>Entities wishing to transfer personal data of Vietnamese citizens offshore are required to:</p> <ul style="list-style-type: none"> Prepare and maintain the OPDTIA dossier ("OPDTIA Dossier"); Submit the OPDTIA Dossier to the A05 within 60 days from the start of the processing; Update the A05 on any changes to the content of the OPDTIA Dossier; Notify the A05 of the contact information point's information when the overseas transfer completes. | | | | <ul style="list-style-type: none"> The OPDTIA Dossier: <ul style="list-style-type: none"> (i) is required to comprise certain mandatory content under the PDPD; (ii) must always be available for inspection and evaluation by the MPS. It is noteworthy that, based on specific circumstances, the MPS shall decide to inspect offshore personal data transfer annually, unless violations of the PDPD are detected, or if there is an occurrence of attempted | N/A |

| No. | Compliance Classification | Compliance Action Required | | | | Description | Exceptions |
|-----|--------------------------------------|--|--------------------------------------|----------------|-------------|---|---|
| | | Data Controller | Data controlling & processing entity | Data Processor | Third Party | | |
| | | | | | | disclosure or loss of Vietnamese citizens' personal data. | |
| 12. | DATA PROTECTION OFFICER & DEPARTMENT | <ul style="list-style-type: none"> ▪ Designate a department with the function of personal data protection. ▪ Appoint personnel to be in charge of personal data protection. ▪ Exchange information of such department and personnel to the A05. | | | | <ul style="list-style-type: none"> ▪ Applicable to cases of sensitive data processing. | The grace period of two (2) years is applicable for micro-enterprises, small enterprises, and medium-sized enterprises, startup companies that are not directly engaged in providing personal data processing services. |

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 45 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:



Dang The Duc
Managing Partner
duc.dang@indochinecounsel.com



Nguyen Thi Hong Anh
Partner, Head of IP&T Practice Group
anh.nguyen@indochinecounsel.com



Le Thi Minh Trang
Legal Assistant
trang.le@indochinecounsel.com



Trinh Ngoc Ly
Associate
ly.trinh@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +84 28 3823 9640
F +84 28 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +84 24 3795 5261
F +84 24 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

This Special Alert is designed to provide our clients and contacts with general information of the relevant topic for reference only, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.

© 2023 Indochine Counsel. All Rights Reserved.