

Special Alert

August 2024

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Vietnam: A New Chapter for Digital Technology Industry

With a view to promote the growth of the digital technology industry as a key contributor to the national economy, the Ministry of Information and Communications (the “**MIC**”) recently released the first draft of the Law on Digital Technology Industry (the “**Draft DTI Law**”) for public comments. On the basis of selectively inheriting relevant provisions of the Law on Information Technology (the “**IT Law**”) and other regulations, the Draft DTI Law aims to tackle various issues in the field of digital technology, with the potential to significantly impact businesses across various industries.

Introducing New Concepts of the Digital Technology Industry

Digital technology, as defined in the Draft DTI Law, includes information technology and new technologies, but is not limited to artificial intelligence (AI), big data, cloud computing, Internet of Things (IoT), blockchain, virtual/augmented reality to digitize the real world, collect, store, transmit, process information, and digital data to serve digital transformation and innovation in all fields. Within this framework, the digital technology industry is also recognized as a foundational industry, representing a high-tech economic and engineering field that produces high-value-added digital technology products and services with impacts across various industries and fields. To reflect the changes introduced by this Draft DTI Law, as regulated by the implementation provision, the term “*digital technology industry*” will replace “*information technology industry*” in the applicable IT LAW.

To align with the aforementioned definitions, a concept of “*digital technology product*” has been stipulated in the Draft DTI Law, which includes information technology products, new technology products, but is not limited to AI, big data, cloud computing, Internet of Things (IoT), blockchain, virtual/augmented reality to digitize the real world, collect, store, transmit, process information, and digital data. It is also noted that manufacturing of digital technology products shall be recognized in the Law on Investment as a business line eligible for investment incentives.

Remarkably, the Draft DTI Law addresses the concept of digital assets, one of the key issues that has attracted attention and sought legal clarification. Accordingly, digital assets are defined as digital technology products, as discussed above, that are created, issued, stored, transferred, and authenticated by blockchain technology, and are legally owned by entities according to the provisions of civil law and relevant laws. This shows the intention of regulators to classify and recognize digital assets as a type of assets under the Civil Code with the nature of property rights. The Ministry of Finance will be assigned to preside over and coordinate with relevant agencies to develop a management policy for this type of asset.

Providing List of Prohibited Actions

To ensure the effective and safe application as well as development of digital technology, the Draft DTI Law provides the list of prohibited acts within digital technology industry activities. Some noticeable prohibited acts include:

- (a) Exploiting digital technology industry activities to infringe upon the interests of the State, the rights and interests of other entities; causing harm to resources, environment, human health; violating ethics, cultural traditions, negatively affecting security, public order, social safety, or Vietnam's foreign relations;
- (b) Producing, transmitting, collecting, processing, storing, providing, exchanging and sharing digital data in the digital technology industry contrary to the provisions of law;
- (c) Infringing upon intellectual property rights; illegally appropriating, assigning or transferring the results of research and development of digital technology products and services; and
- (d) Obstructing the mobilization of digital technology industry resources to serve activities ensuring national defense, security, cryptography, emergencies, or disaster prevention by authorized authorities or individuals; or obstructing the lawful digital technology industry activities of other entities.

Supporting for Digital Technology Enterprises

The Draft DTI Law stipulates levels of support with special investment incentives for super-large projects, offering the highest incentive levels compared to current laws and other countries in the world. Additionally, the Draft DTI Law does not distinguish between manufacturing enterprises and business enterprises simultaneously operating in the digital technology industry. This approach is expected to encourage the growth and attraction of a robust enterprise ecosystem within the domestic digital technology industry.

It is crucial to note that the digital technology industry is a business line eligible for special investment incentives in accordance with investment laws and other relevant legislation. Regarding support for digital technology enterprises within such industry, the outstanding policy can be mentioned as follows:

- (a) Enterprises operating in the digital technology industry are supported to:

- (i) consult and use shared infrastructure invested by the State budget;
 - (ii) consult and participate in testing mechanisms for digital technology products and services;
 - (iii) conduct research and development activities, produce prototypes, construct and assess technical standards for digital technology products and services;
 - (iv) provide market information; and
 - (v) promote and advertise products, services, and enterprises.
- (b) Enterprises with digital technology product production projects are entitled to:
- (i) borrow investment credit from the State according to the provisions of the law on investment credit; and
 - (ii) borrow with preferential interest rates from the Vietnam Environmental Protection Fund for project items related to pollution treatment and environmental protection.
- (c) Digital technology product production projects:
- (i) are exempted from import duties on goods imported to create fixed assets in accordance with the Import and Export Tax Law;
 - (ii) are exempted from and have reduced land use and land rental fees according to the provisions of land law regulations; and
 - (iii) using land is eligible for support for compensation, support and resettlement costs of investment projects at the highest level according to the provisions of land law regulations.

Proposing Sandbox Mechanism for Digital Technology Industry

A key point of the Draft DTI Law is the introduction of a regulatory sandbox framework, which allows for controlled temporary testing of digital technology products and services, subject to specific limitations on space, time, scope, and subjects. It is anticipated that this regulation will achieve the goals of such mechanism by promoting innovation in the application of digital technology products and services, creating a test environment to evaluate risks, costs, and benefits, mitigating risks during the testing phase and contributing to perfecting the Vietnamese legal system.

As one may notice, the testing period is initially set for a maximum of two (2) years from the testing approval date by competent authorities. This period may be extended once the testing participant enterprises have not completed testing before the end of the 60-day period. Furthermore, it is notable that participating enterprises in the testing phase are permitted to provide products within Vietnam's territory only to the extent permitted by the competent authorities, subject to the scope of authorization granted from time to time.

In addition to their rights and responsibilities, the testing participant enterprises must adhere to the following requirements to protect the rights and interests of users during testing:

- (a) Advising users on the risks when using digital technology products and services; providing accurate, complete and truthful information about the testing products and services, service fees, rights and obligations of users;
- (b) Ensuring the safety and confidentiality of users' information during and after testing, except where disclosure is required by law;
- (c) Developing and enforcing internal processes and risk control measures to prevent unauthorized access, use, fraud, and theft of users' personal information;
- (d) Regularly assessing risks, implementing risk prevention measures and promptly notifying of any changes in risk level; and
- (e) Publishing contact information for resolving user complaints. In case of disputes or complaints, they are responsible for: (i) receiving and addressing complaints within five (5) working days from the date of receipt; and (ii) compensating users for damages according to agreements and provisions of law.

It is worth noting, however, that the Draft DTI Law contains cross-referencing errors throughout the document, particularly in Article 67.1, which incorrectly references Article 73 instead of Article 70. Therefore, it is expected that the MIC will carefully review and revise the Draft DTI Law to ensure consistency and completeness before its official enactment.

Identifying the Nature of Artificial Intelligence (AI)

The proposed Draft DTI Law initially regulates artificial intelligence (AI) as a technology aimed at simulating human intelligence using machines, primarily computer systems. The government encourages the widespread adoption of AI as a reliable technology, with a strong emphasis on human-centric ethics and ensuring that the development and application of AI adhere to ethical principles. In addition, the term "AI systems" is clarified as a machine learning-based system designed to generate outputs such as content, recommendation prediction, or decisions for a set of specific human-defined goals.

To ensure the sustainable growth of the digital technology sector, the following AI-related activities, including the use of AI systems, are strictly prohibited:

- (a) Employing techniques to influence an individual's behavior without their awareness or using manipulative or deceptive techniques to significantly distort individuals' behavior by impairing their decision-making ability leading to substantial harm;
- (b) Exploiting the weakness of individuals or groups due to factors like age, disability, or socioeconomic circumstances, thereby severely distorting behavior and causing significant harm;
- (c) Assessing or categorizing individuals based on social behavior or inferred personality traits to: (i) unfair treatment in unrelated social contexts; and/ or (ii) cause adverse harm to individuals or groups that is unjustifiable or disproportionate to the social conduct or its severity;
- (d) Predicting an individual's likelihood of committing a crime based on records or personality

- traits; using AI to directly assess activities related to crime prevention as defined by law;
- (e) Creating or expanding facial recognition databases through the untargeted collection of facial recognition images;
- (f) Inferring human emotions in work and educational environments, except for healthcare and safety applications; and
- (g) Using biometric classification to infer sensitive personal data; excluding labeling or filtering of biometric data collected legally.

For conformity with the remarkable advancements in the AI Act of the European Union (EU), as set by the Draft DTI Law, AI systems are also risk-classified to implement suitable controls for significant impacts on health, rights and interests of other entities, human or property safety, the security of national critical information systems and critical infrastructure. Conversely, AI systems deemed low risk will not require stringent management measures. The risk level of AI systems, however, remains subject to the guidelines of relevant authorities following approval.

Of particular concern, the Draft DTI Law explicitly requires that digital products generated by AI be labeled to ensure that the output of AI systems is marked in a machine-readable format and can be identified as artificially generated or manipulated.

Conclusion

The newly proposed Draft DTI Law marks a significant step towards modernizing Vietnam's legal framework for digital technology. While it offers critical insights into potential regulations for digital assets, AI, regulatory sandbox, and the broader digital industry, further refinement is required in light of public consultation. It is anticipated that subsequent drafts will incorporate this feedback, ensuring better alignment with industry needs.

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