



Special Alert

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Draft Decree Amending Decree 72 on Internet Service and Cyber Information

The Ministry of Information and Communications (the “**MIC**”) has presented to the Government a draft decree dated 21 April 2020 on the amendment and supplementation of Decree No. 72/2013/ND-CP dated 15 July 2013, on the management, provision and use of internet services and cyber information (“**Decree 72**”) and Decree No. 27/2018/ND-CP dated 1 March 2018 amending Decree 72 (the “**Draft Decree**”). The Draft Decree propounds new definitions and combines the existing regulations in the governing sectors, including social networks and cross-border provision of public information. Accordingly, the Draft Decree empowers the management role of the Government authorities as well as details the obligations of relevant entities.

The Draft Decree is published on the Government’s website for gathering public comments, and is expected to be completed by the MIC and presented to the Government for ratification in Q4 2020. Below are some remarkable amendments of the Draft Decree.

Detailing the cross-border provision of public information

The Draft Decree incorporates the regulations on cross-border provision of public information under Circular No. 38/2016/TT-BTTTT of the MIC dated 26 December 2016 (“**Circular 38**”). In particular, it adds a definition of “*cross-border provision of public information*”.

The Draft Decree also specifies in Article 22 when the competent Government authorities are entitled to implement necessary methods to ensure compliance with policies on cyber information development and management (as set out under Articles 4.4 and 4.5 of Decree 72). Specifically, the Government may act when foreign organizations, enterprises or individuals (the “**Foreign Entity**”) provide prohibited information cross-border in violation of Article 5.1 of Decree 72 (i.e. imposing on the provision or use of the Internet service and cyber information for prohibited purposes such as:

advertising for prohibited products, encouraging violence, spreading distort information, etc.). The Government may also act if the Foreign Entity does not cooperate with the MIC to coordinate and handle such violating information.

Regulations on the principle, method and procedure for cooperation in handling violating information is set out under Article 5 of Circular 38 and is also incorporated into Article 22.5 of the Draft Decree. Accordingly, upon receipt of a request from the MIC on handling violating information (in writing or via electronic means) (the “**Request**”), the relevant Foreign Entity must identify and handle such violating information within 24 hours. If the relevant Foreign Entity neither handle violating information as being requested nor respond to the Request, the MIC will send a second Request. Twenty-four hours after the second Request is sent, if the relevant Foreign Entity still fails to handle the violating information and respond to the MIC, the MIC will proactively implement necessary technical methods to prevent such violating information.

Classification of social network types and respective managerial regulations

New definitions

Under the Draft Decree, definition of “*social network*” is listed in Article 20 entitled “*Classification of website*” but in the form of information on cyberspace. This wording fails to clarify whether a social network is a type of website or a form of information on cyberspace, or if the forms of information on cyberspace can only be expressed in the form of a website. Hopefully, this confusion will be resolved after the gathering of public comments.

Article 20 of the Draft Decree also provides the novel definition of “*multi-service social network*”. This definition seems to open up the operational scope of traditional social networks under Decree 72, and allow social network service providers to diversify activities thereon. A multi-service social network is defined as a “*social network integrated with other specialized services in the same platform to jointly use users’ data for optimizing the business operations and services on such platform.*”

If other specialized services integrated in a multi-service social network require sub-licenses or permits, the provider of such multi-service social network must ensure such sub-licenses or permits are sufficiently obtained and remained in compliance with respective applicable specialized legislation.

Classification and respective managerial regulations

Under the Draft Decree, social networks are divided as those with:

- (1) high interaction levels: being those (a) with over 1 million interactive users per month; or (b) having from 10,000 active registered users per month. This type of social network is required to have the License for Establishment of Social Network issued by the MIC (the “**License**”); and

- (2) low interaction levels: being those with less than 1 million interactive users per month. This type of social network is only required to notify the MIC of its operation (and subsequently obtain the confirmation on notification issued by the Authority of Broadcasting and Electronic Information (“**ABEI**”) attached to the MIC).

This new point is believed to loosen the conditions and requirements for setting up and operating social networks. However, to monitor the interaction levels of social networks, the MIC will embed measurement tools on such social networks. Details on these measurement tool, however, is not mentioned or explained in the Draft Decree.

Furthermore, under the Draft Decree, **ONLY** social network granted with a License may collect service fees and provide livestream service.

Conditions for establishment/operation of onshore social network providers

The Draft Decree also adds conditions for the onshore operation of social networks. In particular, the Draft Decree supplements compliance conditions/requirements as to personnel, operations, technical, content management, and governmental procedures, etc. for onshore social network service providers. Some of the remarkable conditions are outlined in the following table:

Issue	Decree 72 (as amended)	Draft Decree
Personnel in charge of content management	At least 1 Vietnamese personnel or foreign personnel with temporary residence card valid for at least 6 months	Vietnamese personnel, having experience in press/bachelor degree in press
Domain name	At least 1 “.vn” domain name (meaning that major domain name may not be “.vn” domain name)	Major domain name shall be “.vn” domain name
Technical	<ul style="list-style-type: none"> ✓ 2-year retention (at the minimum) of data on account, log-in and log-out time, IP address ✓ (Not regulated) 	<ul style="list-style-type: none"> ✓ 2-year retention (at the minimum) of data on account, log-in and log-out time, IP address; and ✓ Having method to ensure only member (whose accounts have been 2-tier identified) can interact on the social network
Content management	<ul style="list-style-type: none"> ✓ (Not regulated) 	<ul style="list-style-type: none"> ✓ Only allow users to live stream about cultural activities, entertainment, advertising, science and technology, education; and

Issue	Decree 72 (as amended)	Draft Decree
	<ul style="list-style-type: none"> ✓ (Not regulated) 	<ul style="list-style-type: none"> ✓ Only display content posted by users on a real time basis; shall not order users to write post under the form of press; shall not organize in fixed categories
Obligations of service provider	<ul style="list-style-type: none"> ✓ Shall not proactively provide <i>violating public information</i> ✓ (Not regulated) ✓ (Not regulated) ✓ (Not regulated) 	<ul style="list-style-type: none"> ✓ Shall not provide <i>public information</i>; ✓ Check, monitor, remove violating information, service (for multi-service social network) after 3 hours at the latest after self-detecting or having request of the competent Government authorities; ✓ Shall have methods to protect child users, e.g. shall not allow children to use social network for more than 180 minutes/day; and ✓ Having methods to pre-check contents posted on social network

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