

Client Alert

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New Internet Content Decree

The Government of Vietnam recently adopted Decree No. 72/2013/ND-CP (the “**Decree**”) regulating the management, supply and use of Internet services and network information.

Beginning on 1 September 2013, the Decree will replace Decree No. 97/2008/ND-CP (“**Decree No. 97**”) and existing regulations on the provision of online games.

The Decree includes new requirements that many businesses may find onerous and impractical. We have highlighted key points of the Decree below.

1. Cross-border supply of public information

The Decree requires that foreign entities that supply “public information” on a cross-border basis comply with “relevant rules” of Vietnamese law if: (i) there are users in Vietnam, or (ii) the service is being accessed from Vietnam. “Public information” is defined as any online information pertaining to an entity or an individual that is published to any third party without requiring any specific identity or address for the latter.

Currently, this requirement is unclear because the Decree does not stipulate which “rules” of Vietnamese law are “relevant” in this context. However, the Decree does state that the Ministry of Information and Communications (“**MIC**”) will later issue detailed regulations regarding the cross-border supply of public information, which hopefully will clarify this issue.

2. Local server requirements for online social networks, general information websites, mobile telecommunications network based content services and online games services

The Decree requires that an entity must locate at least one server in Vietnam in order to (i) establish an online social network, (ii) establish a general information website, (iii) supply content services on mobile telecommunications network, or (iv) provide online gaming services.

Although previous online gaming regulations required a local server for the provision of online gaming services, this is a new requirement for the other listed activities.

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The Decree leaves unclear whether the local server requirement would apply to the cross-border supply of online social network services, general information websites or mobile telecommunications network based content services. If it did, it would amount to an obstacle to the cross-border supply of these services - and might also call into question whether these services could be considered as being provided on a cross-border basis at all.

3. Online games – Foreign service suppliers must establish local entities

Article 31.4 of the Decree requires that foreign entities that provide online gaming services to users in Vietnam must establish a local enterprise in accordance with the Decree and the foreign investment regulations of Vietnam. In addition, the Decree defines “online game service supplying enterprises” as those established in Vietnam that provide online games through the establishment of equipment systems (local servers, websites, etc.) and the use of legal online games software. In practical terms, this requirement may amount to a prohibition against the cross-border supply of online games services.

However, the Decree does not make clear whether Vietnamese authorities may act to prevent users in Vietnam from paying fees to, or block access to, the various possibly non-compliant off-shore entities that currently provide online gaming services into Vietnam.

The Decree does not expressly prohibit the conversion of game virtual items and prizes into real money or assets, instead leaves it to the MIC to regulate such activities.

The Decree requires a number of measures to mitigate the possible negative social impacts of online gaming. For example, the Decree requires that advertisements for online games include (among other things) warnings regarding the negative physical and mental consequences to users that may result from their playing of online games.

4. Licensing requirements – online social network, general information websites, and “G1 type” online games services

Under the Decree, the establishment of an online social network requires a license from the MIC - instead of a registration certificate as currently required under Decree No. 97. It is unclear whether this requirement applies to foreign online social networks that are accessible, on a cross-border basis, by users in Vietnam. The establishment of certain general information websites will also require a license from the MIC - including websites owned by press agencies, religion organizations, non-governmental organizations, governmental organizations and other organizations identified by the MIC.

The establishment of other general information websites will require a license from the relevant local Department of Information and Communications.

The provision of G1 type online games (which allow concurrent interaction among multiple players through a supplier's server) will also require a licence from the MIC. Other types of online games, for example G2, G3 and G4 games, are subject to the registration procedures discussed below.

5. Registration requirements – mobile telecommunications network based content services and “G2, G3, G4 type” online games services

Registration procedures must be conducted with the MIC before the provision of the following services:

- mobile telecommunications network based content services and online games services;
- G2 type games – that include interaction between players and the gaming service supplier's servers;
- G3 type games – that include interaction among multiple players but not between players and the gaming service supplier's servers; and
- G4 type games – that are downloaded from the Internet without any interaction among players or between players and the gaming service suppliers' servers.

6. Licensing/registration conditions – applicant established in Vietnam

Importantly, in order to fulfil the licensing and registration requirements of Sections 4 and 5 above, an applicant must satisfy a number of conditions, including being established in Vietnam. It is unclear from the Decree whether an off-shore entity must also satisfy this condition before providing social network services or general information to users in Vietnam.

7. Accession to online social network requires accurate and complete personal information

The Decree sets out a number of obligations applicable to online social network service suppliers (“**Suppliers**”). For example, Suppliers must ensure that only individuals who have supplied accurate and complete personal information as required by law may create blogs or provide information on social networks. The Decree does not specify whether Suppliers are required to verify the accuracy and completeness of each their users' personal information before accepting new subscriptions to their networks, or whether they only need to remove those users whose

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information is later confirmed by a relevant authority to be false or incorrect.

8. “Private information” pertaining to organizations will be protected

The Decree requires the protection of both personal information and private information. Although “personal information” includes information that identifies a person (name, address, ID, etc.), the definition of “private information” includes information that a person or an organization does not publicize or only publicizes to an entity or a group of entities whose identity and address are known.

9. Domain name dispute resolution

The Decree provides the legal basis for a legitimate trademark or trade name owner to bring action against a party that has pirated its “.vn” domain name. This legal basis is similar, though not identical, to certain provisions of the Uniform Domain Name Dispute Resolution Policy (UDRP) of the ICANN.

This significant development grants companies the opportunity to claim back their “.vn” domain names that have been unlawfully appropriated in Vietnam.

10. Other issues

The Decree also covers a range of issues related to the management, supply and use of Internet services, the management of Internet resources, data security requirements, and others matters.

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Please do not hesitate to contact us if you would like any further information on the Decree.

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