

LEGAL NEWSLETTER



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Notable activity in May, 2023

On May 8, 2023, Mrs. Tran Thi Thanh Huyen - Partner of NHQuang & Associates, Chairman of the Vietnam Business Lawyers Club (VBLC) gave the opening speech at the Vietnam ADR Week Event - Adapting to a Vibrant Asia (VAW 2023). This is a series of activities organized by VBLC and the Vietnam International Arbitration Centre (VIAC) with the aim to create a forum for various experts, lawyers, researchers, and communities of business and law practitioners in Viet Nam and in other regions to exchange experience and knowledge on legal risks in international trade and investment as well as managing and resolving disputes.

In five days from 8 to 12 May, VAW 2023 held 16 events in Ha Noi and Ho Chi Minh City, which focused on discussing issues about legal risk prevention and dispute resolution as well as business experience to adapt to the socio-economic conditions of Asia after the COVID-19 pandemic. With the expansion of the operation scale with the companionship of domestic and international partners, VAW 2023 expects to create connections in dispute resolution activities in Viet Nam, other regions, and the world; help enhance the arbitration in Viet Nam; and eventually establish Viet Nam as a prominent choice for resolving disputes between parties.

SOME HIGHLIGHTS OF THE DECREE ON PERSONAL DATA PROTECTION

HUYEN THU

On April 17, 2023, the Government issued Decree 13/2023/ND-CP on personal data protection (**Decree 13**) with the goal of meeting requirements on protecting personal data rights, preventing acts of infringing personal data and affecting the rights and interests of individuals and organizations. In particular, Decree 13 recognizes the definition of "personal data", and comprehensively recognizes the basic rights of Data Subjects, and the responsibilities of enterprises processing and controlling data. In addition, the functions and competence of the department in charge of personal data protection, abroad transfer of personal data, and measures for protecting personal data, etc. are also specified in this Decree. The followings are some outstanding contents of Decree 13:

Firstly, defining and classifying personal data. Decree 13 stipulates that personal data is information in the form of symbols, letters, numbers, images, sounds, or similar forms in the electronic environment that are associated with a certain individual or used to identify an individual. Also, personal data is classified into two groups of "basic personal data" and "sensitive personal data", specifically:

- Basic personal data as stipulated in clause 3, Article 2 of Decree 13 includes such information as first name, middle name, birth name, other names (if any); gender; nationality; individual photos; phone number, ID Card number, and personal identification number.
- Sensitive personal data as stipulated in clause 4, Article 2, Decree 13 is personal data associated with individual privacy rights which will directly affect an individual's legal rights and interests once it is infringed, including such information as political perspective, religious perspective, and information related to racial or ethnic origin.

Secondly, stipulating the rights of Data Subjects. According to Decree 13, a Data Subject is an individual presented by personal data. The rights of a Data Subject gather many rights of individuals to



data, including 11 rights: Right to be informed; Right to give consent; Right to access; Right to withdraw consent; Right to delete data; Right to restrict data processing; Right to file complaints, denunciations, and lawsuits; Right to provide data; Right to object to data processing; Right to claim damages; Right to self-protection. In general, in accordance with Decree 13, the consent of Data Subjects (the clear and voluntary presentation by the data subject to affirm permit for the processing of their personal data) applies to all activities within the procedure of personal data processing; however, in some cases of processing personal data, the consent of Data Subjects is not requested, namely:

- Immediately processing relevant personal data in emergency cases to protect the life and health of Data Subjects or others (it should be noted that Personal Data Controllers, Personal Data Processors, Personal Data Controller-cum-Processors, and the Third Parties are responsible for proving the emergency in this case);
- Disclosing personal data under the law;
- Processing data by competent state agencies in case of national defense emergency, national security, social order and safety, major disasters, or dangerous pandemics; when there is a risk threatening security and national defense but not to the extent of declaring a state of emergency; in case of prevention and fight against riots and terrorism, crimes and law violations by law;
- Performing obligations under a contract of the Data Subject with relevant agencies, organizations, and individuals by law;
- Serving activities of state agencies prescribed by specialized laws;
- Processing personal data obtained from audio and video recordings in public places.

Thirdly, stipulating responsibilities of Personal Data

Controllers, Personal Data Processors, and Personal Data Controller-cum-Processors in the process of controlling and processing personal data. Accordingly, Decree 13 specifies the responsibilities of data controllers, data processors, and relevant third parties to ensure the protection of personal data during personal data processing in Articles 38 to 40, for example:

- The Personal Data Controller is responsible for performing appropriate organizational and technical measures with safety and security to demonstrate that the data processing activities have been implemented in accordance with the regulations on protecting personal data, and also reviewing and updating these measures if necessary.
- The Personal Data Processor only receives personal data after signing a contract or an agreement on data processing with the Personal Data Controller; handles personal data according to the contract or agreement signed with the Personal Data Controller.

In addition to the above responsibilities, Personal Data Controllers, and Personal Data Controller-cum-Processors must conduct and save the dossier of personal data processing impact assessment from the time of starting to process personal data (with the document contents specified in clause 1, Article 24, Decree 13). Personal Data Processors shall conduct and save the dossier of the personal data processing impact assessment in the case of performing a contract with the Personal Data Controller (with the document contents specified in clause 2, Article 24, Decree 13). The dossier of impact assessment of personal data processing must be available for inspection and evaluation by the Ministry of Public Security and sent to the Department of Cyber Security and Hi-tech Crime Prevention under the Ministry of Public Security, the department in charge of protecting personal data, within 60 days from the date of processing personal data.

Also, the rights and responsibilities of Personal Data Controllers, Personal Data Processors, and Personal Data Controller-cum-Processors are stipulated scatteredly in many other clauses such as the right to edit personal data of Personal Data Processors, the Third Parties in Article 15, the responsibility to delete personal data which cannot be restored of Personal Data Controllers, Personal Data Controller-cum-Processors, the Third Parties stipulated in clause 7, Article 16.

Fourthly, stipulating the abroad transfer of personal data. According to Decree 13, abroad transfer of personal data is an activity using cyberspace, electronic equipment, tools, or other forms of transferring personal data of Vietnamese citizens to a location outside the territory of Viet Nam or using a location outside the territory of Viet Nam to handle personal data of Vietnamese citizens, including the case that:

- (i)** Organizations, enterprises, and individuals transfer the personal data of Vietnamese citizens to foreign organizations, enterprises, and management departments for processing in relevance to the purposes consented by Data Subjects;
- (ii)** Vietnamese citizens' personal data is processed through automated systems located outside Viet Nam of Personal Data Controllers, Personal Data Controller-cum-Processors, and Personal Data Processors processing in relevance to the purposes consented by Data Subjects.

It should be noted that when transferring personal data of Vietnamese citizens abroad, the Parties transferring data abroad (including Personal Data Controllers, Personal Data Processors, Personal Data Controller-cum-Processors, and the Third Parties) must prepare the dossier of impact assessment of transferring personal data abroad (with contents specified in clause 2, Article 25, Decree 13), and submit the original dossier to the Department of Cyber Security and Hi-tech Crime Prevention, as well as send a written notification to this department about this transfer and detailed contact information of the organization or individual in charge when the data is transferred successfully. Notably, based on the specific situation, the Ministry of Public Security shall decide to inspect the transfer of personal data abroad once a year, except for the case of detecting violations of the law on personal data protection in Decree 13 or the case of revealing or losing a Vietnamese citizen's personal data.

Fifthly, stipulating measures to protect personal data. According to Decree 13, to avoid the illegal collection, transfer, and trading of personal data, organizations and individuals related to personal data processing must perform personal data protection measures to prevent the unauthorized collection of personal data from their systems, equipment, and services. In addition, measures to protect personal data must be described specifically in the impact assessment dossier of personal data

processing and transferring personal data abroad when the dossier is submitted to the Ministry of Public Security for approval; and must be applied at the beginning of and throughout the personal data processing. The measures to protect personal data specified in this Decree comprise:

- Management measures taken by organizations and individuals related to personal data processing;
- Technical measures taken by organizations and individuals related to personal data processing;
- Measures taken by competent state management agencies by this Decree and relevant laws;
- Investigative and procedural measures taken by competent state agencies;
- Other measures as prescribed by law.

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 13 is considered as a breakthrough, creating a legal framework to protect personal information and data, raising the parties' awareness and responsibility on personal data protection, and avoiding disclosing, appropriating, and trading personal data. Decree 13 will take effect from July 1, 2023, thus individuals and organizations need to study this new document, especially the provisions on the rights and responsibilities of Data Subjects, Personal Data Controllers, Personal Data Processors, requirements to protect personal data during personal data processing (section 2, Chapter II), prohibited acts (Article 8) to ensure the maximum interests of individuals and organizations, as well as their responsibilities in the process of using and processing personal data, avoiding administrative sanctions, criminal handling due to violation of regulations on personal data protection.

NEW REGULATIONS ON RESCHEDULING DEBT REPAYMENT AND MAINTAINING DEBT GROUPS

THUY MAI

On April 23, 2023, the State Bank of Vietnam issued Circular 02/2023/TT-NHNN on rescheduling debt repayment and maintaining debt groups by credit institutions and foreign bank branches to support customers facing difficulties (**Circular 02**). Based on the positive effects of the policy on rescheduling debt repayment and maintaining debt groups specified in Circular 01/2020/TT-NHNN (and its amendments and supplements) to support the customers affected by the COVID-19 pandemic, Circular 02 is developed and issued with the goal to continue supporting people and enterprises to overcome difficulties in production and business activities, with the inherited and modified contents based on the provisions of Circular 01/2020/TT-NHNN (amended and supplemented). Circular 02 takes effect from April 24, 2023 with several noteworthy contents as follows:

Firstly, regulations on rescheduling debt repayment in Article 4, Circular 02. Accordingly, on the basis of customers' requests and the financial capacity of credit institutions or foreign bank branches (hereinafter referred to as the "Credit Institutions"), the Credit Institutions shall consider and decide to reschedule debt repayment for the outstanding principal balance and/or interest of debts that meet the following conditions:

- i.** The outstanding principal balance arises before the effective date of Circular 02 (April 24, 2023) and from lending and financial leasing activities;
- ii.** The obligation to repay principal and/or interest arises in the period from April 24, 2023, to the end of June 30, 2024;
- iii.** The outstanding balance of the loan rescheduled for repayment is still within due or overdue up to 10 days from the due date of payment or the repayment term under the relevant contract or agreement;
- iv.** The Credit Institution assesses that the borrower is unable to repay the principal and/or interest on time



under the contract or agreement due to a decrease in revenue and income compared to the revenue and income in the principal and/or interest repayment plan under the contract or agreement;

v. The Credit Institution assesses that the borrower can fully repay the principal and/or interest within the rescheduled debt repayment term.

vi. The Credit Institution fails to reschedule debt repayment for debts in violation of law provisions;

vii. The time for repayment rescheduling (including debt extension) is determined by the difficulty degree of the borrowers and must not exceed 12 months from the due date of the rescheduled debt balance repayment term;

viii. Debt rescheduling for customers specified in Circular 02 shall be carried out from April 24, 2023 until the end of June 30, 2024.

Secondly, regulations on maintaining debt groups and classifying debts in Article 5, Circular 02. Accordingly, debts with the outstanding principal balance and/or interests which have been rescheduled for repayment under Circular 02 will be kept in the same debt group as the group of debts that have been classified at the latest time before repayment rescheduling under Circular 02. Besides, for debts after rescheduling repayment and maintaining the group of outstanding debts according to the rescheduled term, Credit Institutions are not required to apply the principle of adjustment and reclassification into the debt group with higher risk levels. In the case where a debt is overdue, after being rescheduled and maintained in the same debt group, according to the rescheduled time, but the Credit Institution does not continue to reschedule the repayment term, the debts will be classified by the Credit Institution in accordance with related regulations.

Comments and recommendations

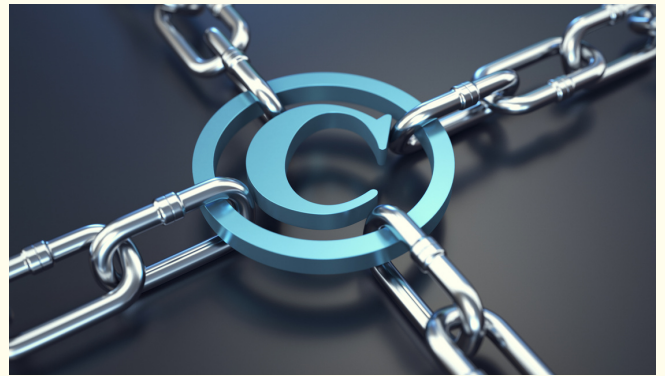
It can be seen that the promulgation of Circular 02 will help individuals, organizations, and enterprises reduce financial pressure and debt repayment pressure when they can reschedule the repayment term and do not have to change debt groups, and at the same time have the ability to access new loans (due to the permitted maintenance of the same debt group). It should be noted that rescheduling debt repayment in accordance with Circular 02 shall be carried out from April 24, 2023 to the end of June 30, 2024, therefore, individuals, organizations, and enterprises need to study the provisions of this Circular and consider conducting an assessment of the conformity with the conditions set forth in this Circular, and at the same time work directly with the relevant Credit Institutions to maximize their rights and benefits in accordance with the law.

TYPICAL CONTENTS OF THE DECREE GUIDING COPYRIGHT AND RELATED RIGHTS

TUE DANG

On April 26, 2023, the Government promulgated Decree 17/2023/ND-CP detailing several provisions and measures for the implementation of the Law on Intellectual Property on copyright and related rights (**Decree 17**), replacing Decree 22/2018/ND-CP, regulations on the protection of copyright and related rights in Decree 105/2006/ND-CP amended and supplemented by Decree 119/2010/ND-CP. Decree 17 potentially creates a significant impact on several parties such as organizations and individuals doing scientific research/academic studies, enterprises doing business in the fields of entertainment, and providing intermediary services. Below are some contents of Decree 17 that should be addressed:

Firstly, Decree 17 specifies several business activities using works, audio, and video recordings for commercial purposes that must pay royalties. Article 34, Decree 17 regulates the **(i)** use of works that have been fixed in audio and video recordings by permission of the copyright holders, or **(ii)** use of published audio and video recordings for commercial purposes in business activities, which means the use of published works, audio and video recordings by organizations or individuals for commercial purposes at restaurants, supermarkets; amusement parks and commercial centers; sport clubs; karaoke establishments; bars, dancing bars; aviation, public transport activities, and other similar business and commercial activities. Many business entities for long have been using music and movies as part of their services offered to customers, yet they have not paid any royalties to the copyright holders, performers, and related right holders owning such works, audio, and video recordings. This adversely affects the legitimate rights and interests of these parties. To ensure the harmonization of the legitimate interests of these entities, Decree 17 stipulates that organizations and individuals using published works, audio and video recordings for commercial purposes *must pay royalties* to the copyright holders, performers, and related right holders owning such audio and video recordings under agreement from the time of their use. The amount of royalties to be paid



is mutually agreed upon by both parties. If no agreement is reached, they must pay the royalties according to the rate schedule specified in Appendix II, Decree 17, or may initiate a lawsuit at the competent Court in accordance with provisions of the law. In addition, organizations and individuals must cease their use of published works, audio, and video recordings if relevant royalties are not paid within 90 days from the date of their use.

Secondly, Decree 17 clarifies the "reasonable" condition of some exceptions that do not infringe copyright, particularly for copying and reciting activities:

- For copying, "reasonable" copying of a part of a published work by a copying device for scientific research, personal study, and non-commercial purposes is reasonably creating no more than one copy of a portion of such work. For works expressed in written form, reproduction by photocopying, photographing, or other similar reproducing forms must not exceed 10% of the total number of pages or total storage units (bytes), the total number of words or content length for the work in electronic format without a split-page layout. If an organization or individual copies more than 10% of the work as mentioned above, such organization or individual must (i) obtain permission from the copyright owner and (ii) pay royalties and other material benefits (if any) to the copyright owner.
- For recitation, the Decree does not quantify any certain rate but provides 03 conditions to evaluate the "reasonability" of recitation (it has one more condition compared to Decree 22/2018/ND-CP), including (i) the recitation is only used to *introduce, comment, or clarify* the issue mentioned in the work, (ii) it must *not unreasonably damage the legitimate* interests of the author or the copyright owner of the recited work; be compatible to the nature and characteristics of the recited work and (iii) it must *include a reference to the source of the*

work and the author's name if the author's name is mentioned in the recited work.

Thirdly, Decree 17 stipulates numerous legal responsibilities for enterprises providing intermediary services. Decree 17 stipulates that enterprises providing intermediary services are those providing one, several, or all of the following three services: (i) mere conduit service, (ii) caching service, (iii) hosting service. This service classification is similar to the regulation on intermediary services in the Digital Services Act of the European Union. Some typical responsibilities of enterprises providing intermediary services to protect copyright and related rights in the telecommunications network and Internet are as follows:

- Build *a tool to receive requests for removing or preventing access to digital information* that infringes copyright and related rights, including computer programs, websites, electronic mailboxes, request-receiving e-portals, and other tools having similar functions;
- Notify *contact points for communications relative to copyright and related rights issues* (at least an email address and contact phone number must be provided) to specialized state authorities of the Ministry of Culture, Sports, and Tourism in charge of copyright and related rights and publicize this information on the website;
- Warn service users about their legal responsibilities if they infringe copyright; *provide user information* when receiving a written request from a competent state authority to serve the verification and handling of copyright and related right infringement;
- *Remove or prevent* access to digital information that infringes copyright or related rights at the request of competent state authorities as prescribed in Article 113, Decree 17, or the right holder as prescribed in Article 114, Decree 17.

COMMENTS AND RECOMMENDATIONS

Decree 17 has ensured more comprehensive protection for the legitimate rights and interests of copyright and related right holders compared to Decree 22/2018/ND-CP, Decree 105/2006/ND-CP, and Decree 119/2010/ND-CP. In addition, it has imposed various legal responsibilities on organizations and individuals using copyrighted objects such as works, audio, and video recordings. Therefore, corporates should pay attention to thoroughly study the provisions of this Decree to ensure full compliance with their obligations and responsibilities, thereby preventing legal risks related to copyright and related rights.

AUTHOR TEAM



DANG HUYEN THU
Legal Consultant



TRAN THI THUY MAI
Legal Consultant



LUU TUE DANG
Associate

EDITORIAL TEAM



LE HAI LINH
Legal Consultant



NGUYEN THUY DUONG
Senior Associate

DESIGNER



NGUYEN HOANG AN

Please visit us at:



Ha Noi Office:
Villa B23, Trung Hoa - Nhan Chinh
Nguyen Thi Dinh Street, Nhan Chinh Ward
Thanh Xuan District, Ha Noi, Viet Nam
Tel: 84 24 3537 6939
Fax: 84 24 3537 6941
Web: www.nhquang.com

Ho Chi Minh City Branch:
First floor, Harmony Tower, No. 47-49-51
Phung Khac Khoan Street, Da Kao Ward
District 1, Ho Chi Minh City, Viet Nam
Tel: 84 28 3822 6290
Fax: 84 28 3822 6290
Email: contact@nhquang.com