

LEGAL UPDATE

December 2024

ON THE NEW REGULATIONS ON THE OFFSHORE INTERNET-BASED CONTENT PROVIDERS**KEY TAKEAWAYS**

- On 9 November 2024, the Vietnamese government issued Decree 147, which replaces Decree 72 for the purpose of management, provision and use of Internet services and online information. Generally, Decree 147 sets forth stricter requirements for impacted subjects, which include local and offshore individuals and entities.
- Offshore news media, social network sites and applications, platforms, and search engines that provide online information or services to Vietnam-based users are among the impacted subjects and are required to comply with various requirements, ranging from providing contact information to the authorities, to taking down contents that violate Vietnamese laws.
- Decree 147 is quite substantial with complex provisions. Clients are advised to consult with professionals for detailed guidance on the application of the decree.

OVERVIEW

On 9 November 2024, the Vietnamese government issued Decree No. 147/2024/ND-CP (“**Decree 147**”) providing measures for the management, provision and use of Internet services, and online information. Decree 147 replaces Decree No. 72/2013/ND-CP dated 15 July 2013 (as amended by Decree No. 27/2018/ND-CP dated 1 March 2018) (together, “**Decree 72**”). Specifically, Decree 147 regulates the following matters: Internet services and resources, online information and games, and services on mobile networks.¹

Generally, by incorporating the provisions of the Law on National Security of 2004, Law on Network Security of 2015, Law on Children of 2016, Law on Cyber Security of 2018 and the need for content control in the online environment, Decree 147 sets forth stricter requirements for impacted subjects, which include local and offshore individuals and entities providing and/or using Internet services and online information in Vietnam. These requirements involve licensing, registration, reporting, and sanctions such as access blocking, content removal, or account suspension for violations.

In this Legal Update, we discuss the key new requirements of Decree 147 which we consider relevant to the offshore Internet-based content providers.

CLARIFICATIONS ON THE IMPACTED SUBJECTS

Decree 147 introduces a new term “foreign organizations, businesses and individuals providing cross-border information to Vietnam” (in Vietnamese: tổ chức, doanh nghiệp, cá nhân nước ngoài cung cấp thông tin xuyên biên giới vào Việt Nam) (“**Offshore Info. Providers**”) and provides a fairly extensive list of requirements for these subjects (as detailed below). Decree 147 defines

¹ In this Legal Updates we do not discuss the impacts of Decree 147 on other aspects such as domain registration, online games, etc.

“providing cross-border information” as “the act of organizations and individuals abroad providing information and online information content services for service users in Vietnam to access or use the services”.² With this broad definition, it seems challenging to identify which Offshore Info. Providers would fall under Decree 147’s coverage.

However, by looking at the definition of “providing cross-border public information” under Circular No. 38/2016/TT-BTTTT of the Ministry of Information and Communications (“**MIC**”) dated 26 December 2016 (“**Circular 38**”), which should carry the same meaning as “providing cross-border information,” we can infer which entities would qualify as impacted Offshore Info. Providers. More specifically, Article 2.1 of Circular 38 defines “providing cross-border public information” as “the act where an overseas organization or individual uses electronic information pages, social network sites, online applications, search services and other online equivalents in order to provide public information accessed or used by both an entity and an individual in Vietnam” (underline added for emphasis).

Article 20 of Decree 147 categorizes electronic information pages as: (i) Electronic newspapers and electronic magazines; (ii) General electronic information pages; (iii) Internal electronic information pages; (iv) Personal electronic information pages; (v) Electronic information pages providing specialized services; (vi) Electronic information pages providing social networking services as prescribed in Decree 147; and (vii) Electronic information pages providing information in the form of electronic information portals.

In summary, the Offshore Info. Providers are likely to include a broad range of offshore news media, social network sites and applications, platforms, and search engines that provide online information or services to Vietnam-based users.

REQUIREMENTS FOR IMPACTED PROVIDERS

Decree 147 requires the following Offshore Info. Providers be put under the supervision of Vietnamese authorities:

- (a) Those use data storage rental services³ in Vietnam; OR
- (b) Those have a total number of regular visits⁴ from Vietnam in one month of 100,000 hits (according to the average number in six consecutive months).⁵

The Offshore Info. Providers which fall under either category (a) OR category (b) above are hereinafter defined to as “**Impacted Providers**”.

Article 23 of Decree 147, being the main article regulating Impacted Providers, requires the latter to do the following:

- (a) Notify the Ministry of Information and Communications⁶ of contact information within 60

² Article 3.33 of Decree 147.

³ Article 3.45 of Decree 147 defines “data storage rental service” as “a service that provides storage space set up by service providers for organizations and individuals.”

⁴ Decree 147 fails to define what are considered “regular visits”.

⁵ Circular 38 provides the threshold of one million hits in one month.

⁶ According to a restructure plan, MIC’s departments may be merged into the Ministry of Science and

days from the time of using data storage rental services in Vietnam or meeting the number of visitors as prescribed in Item (b) of the preceding Section (Clarifications on the Impacted Subjects);

- (b) Inspect, monitor and delete information, services and applications that violate Article 8 of the Law on Cyber Security;⁷ Block and remove information, services and applications that violate such law article or other law provisions upon request of MIC, the Ministry of Public Security (“**MPS**”) or other relevant authorities (together, the “**Authorities**”);
- (c) Store information of Vietnamese users upon their registration of a social network account, including their name, date of birth, mobile phone number in Vietnam or personal identification number (“**PIN**”);
- (d) Provide information of Vietnamese users to the Authorities upon the latter’s written request;
- (e) Authenticate the accounts of Vietnamese users by their mobile phone number or PIN and ensure that only authenticated accounts are allowed to post information (i.e., writing posts, giving comments or conducting livestream) and share information on social networks. In case a social network user uses the livestream feature for commercial purposes, the Impacted Provider must authenticate his/her account using PIN. The time limit for authentication is 90 days from the effective date of Decree 147 (i.e., 25 December 2024);
- (f) Classify and display warnings about contents that are not suitable for children; Deploying solutions to protect children according to the laws and regulations on child protection;⁸
- (g) Have tools to receive and handle complaints from users. Within 48 hours of receiving a complaint from a Vietnamese user about content that violates Article 8 of the Law on Cyber Security, the Impacted Provider must remove the contents, services, and/or applications that violate the law;
- (h) For Impacted Providers that have providing application stores, they must remove illegal applications upon request from the Authorities and comply with law provisions on payments;⁹
- (i) Provide search tools and scan contents as required by MIC and MPS;
- (j) Coordinate with MIC to provide information and disseminate Vietnamese regulations related to the use of the Internet and online information to Vietnamese users;
- (k) Submit periodic reports no later than November 25 every year according to Form No. 09 attached to Decree 147 and submit *ad hoc* reports upon MIC’s request;

Technology or the Ministry of Culture, Sports and Tourism in future. MIC could be dissolved following the plan.

⁷ Article 8 of the Law on Cyber Security provides the list of prohibitive acts such as those against the national security, lawful rights of other persons, or spreading of false information, etc.

⁸ The requirements for child protection in the online environment are detailed in Articles 33 – 37 of Decree No. 56/2017/ND-CP of the Government dated 9 May 2017 guiding the Law on Children.

⁹ Decree 147 does not explain the what the law provisions on payments are. However, we understand they are regulations on foreign exchange control and payment mediums.

- (l) For Impacted Providers that operate social networks, they are additionally required to do the following:
 - (i) Describe the process and method of distributing contents on the social network and publicly announce them in the Service Provision Agreement/Community Standards for users to choose to use the service (or not);
 - (ii) Authenticate and attach the authenticated symbol to accounts, pages, channels of state agencies, organizations, companies in Vietnam, and influential people when requested by those agencies, organizations, companies, and individuals; and
 - (iii) For social networks that directly provide on-demand radio and television content services and collect subscription fees from service users, the Impacted Providers must comply with the regulations on paid radio and television services.

INSTRUCTIONS FROM THE AUTHORITIES AND CONSEQUENCES FOR VIOLATIONS

Upon request from an Authority, the Impacted Provider must: (i) block and remove illegal contents, services and/or applications; or (ii) temporarily or permanently block accounts or prevent users in Vietnam from accessing pages or channels that post prohibitive contents. Often, the Impacted Provider must fulfil the request within 24 hours.

In case an Impacted Provider does not comply with the above requirements, MIC and/or MPS will deploy technical measures to prevent all contents, services and applications of the violator, and impose applicable administrative sanctions.

EFFECTIVENESS AND FINAL NOTE

Decree 147 takes effect on 25 December 2024. All licenses and approvals which have been granted under Decree 72 remain effective until their expiration.

On a final note, Decree 147 is quite lengthy (over 200 pages) with complex provisions. Our above analysis only contains key regulations applicable to the Impacted Providers. Clients are advised to consult with us for detailed guidance on the application of the decree.

Scientia