

LEGAL UPDATE

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ON THE NEW DRAFT LAW ON DIGITAL TECHNOLOGY**KEY TAKEAWAYS**

- Vietnam's National Assembly recently debated the draft Law on the Digital Technology Industry, which aims to create a comprehensive legal framework for Vietnam's digital technology industry, encompassing definitions, regulations, and support for various areas such as AI, semiconductors, and digital assets.
- The Draft Law emphasizes government support for research and development, including financial assistance, incentivizing investment, and promoting innovation within the digital technology sector.
- While establishing a foundation, the Draft Law seems heavily relying on forthcoming government regulations, which could potentially hinder the timely development of the digital ecosystem in Vietnam.

OVERVIEW

In late November and early December 2024, the National Assembly of Vietnam discussed the draft Law on the Digital Technology Industry (Vietnamese: Luật Công nghiệp công nghệ số) (“**Draft Law**”). This Draft Law represents Vietnam's attempt to establish a comprehensive legal framework for the advancement and management of this burgeoning sector. The Draft Law covers various aspects, such as:

- (a) Defining digital technology and related concepts like digital industry, semiconductors, digital assets, and artificial intelligence;
- (b) Outlining activities within the digital technology industry, including manufacturing and supplying digital products and services;
- (c) Setting forth policies for the development of the digital technology industry, including supporting innovation, research and development, and human resources development;
- (d) Establishing a regulatory sandbox mechanism for controlled testing of new digital convergence products and services; and
- (e) Addressing specific areas like the semiconductor industry and the development and use of artificial intelligence.

This Legal Update presents the key highlights of the Draft Law and identifies some of its potential shortcomings.

There is no set timeline for the National Assembly's ratification of the Draft Law. Consequently, its contents are still under development.

KEY HIGHLIGHTS OF THE DRAFT LAW

ESTABLISHMENT OF THE NATIONAL INFORMATION SYSTEM AND DATABASE

The Draft Law mandates the creation of a national information system and a dedicated database for the digital technology industry. This database will serve as a central repository for information related to various stakeholders, including:

- (a) Government agencies, organizations, and educational and research institutions involved in the digital technology industry;
- (b) Digital technology companies, covering their general information, workforce, products and services, and publicly available financial reports;
- (c) Market information, including data on key products and services, as well as those undergoing sandbox testing;
- (d) Digital technology parks and high-risk AI systems;
- (e) Information on completed projects, investment needs and plans of government agencies for utilizing digital products and services;
- (f) Research and development outcomes, including patents and intellectual property rights, excluding trade secrets;
- (g) Data on the digital technology workforce, including projections for future employment needs; and
- (h) Relevant policies, regulations, standards, and technical requirements.

RESEARCH AND DEVELOPMENT

The Draft Law emphasizes the Vietnamese government's role in fostering R&D in the digital technology industry. It includes provisions for:

- (a) Financial support from the state budget for R&D projects, including those focused on the design, manufacture, testing, and inspection of digital technology products;
- (b) Prioritizing funding for digital technology research within national science and technology programs;
- (c) Promoting the development of innovation centers and R&D institutions specializing in digital technology;
- (d) Offering incentives to organizations and individuals investing in facilities and infrastructure for semiconductor research and development; and
- (e) Prioritizing registration of research proposals related to semiconductors for funding from various scientific and technological funds.

REGULATORY SANDBOX MECHANISM

A key feature of the Draft Law is the establishment of a regulatory sandbox. This mechanism will allow for the controlled testing of new digital convergence products, services, and business models that either fall outside existing regulations or introduce novel approaches not yet addressed by existing laws. Key features of the sandbox include:

- (a) Eligibility criteria: Products and services must demonstrate innovativeness, low risk to users and the market, and potential for scalability after testing;
- (b) Controlled environment: Testing is limited in terms of duration, geographical scope, scale, and the types of participants involved;
- (c) Limited duration: The maximum testing period is two years, extendable for another two years;
- (d) Exemptions and obligations: Participating organizations are exempt from certain regulations during testing but must comply with data privacy, cybersecurity, and consumer protection laws; and
- (e) User protection: The draft law outlines specific responsibilities for organizations participating in the sandbox to ensure the protection of users. This includes providing clear information about risks, ensuring data security and privacy, and establishing mechanisms for handling user complaints and disputes.

FOCUS ON SEMICONDUCTORS

The Draft Law highlights the importance of developing a domestic semiconductor industry in Vietnam. It outlines principles and policies aimed at:

- (a) Focusing on specialized chips, AI-integrated chips, and integration with the global semiconductor ecosystem;
- (b) Aligning semiconductor development with the electronics industry, particularly in areas like Internet of Things (IoT) devices and specialized electronic equipment;
- (c) Investing in R&D infrastructure, including state-of-the-art testing facilities and software resources;
- (d) Attracting foreign investment and leveraging domestic and international resources to boost the industry's growth;
- (e) Providing tax incentives and other benefits to companies involved in semiconductor design and manufacturing; and
- (f) Supporting the training and development of a skilled workforce to meet the industry's needs.

REGULATION OF ARTIFICIAL INTELLIGENCE

Recognizing the growing importance of AI, the Draft Law includes provisions for its responsible development, deployment, and use. Key aspects of AI regulation in the Draft Law include:

- (a) Guiding principles: Principles for AI development emphasize human control, transparency, safety and security, risk management, responsible innovation, environmental friendliness, and international cooperation.
- (b) Risk management: The Draft Law identifies high-risk AI systems based on their potential to cause harm to health, safety, or the rights and interests of individuals and organizations. It mandates risk assessment and mitigation measures for such systems.
- (c) Transparency and labeling: Products generated by AI systems must be clearly labeled to inform users.
- (d) Responsibilities of stakeholders: The draft law outlines specific responsibilities for AI system developers, providers, deployers, and users, emphasizing ethical considerations, data protection, and risk mitigation.

REGULATION ON DIGITAL ASSETS

For the first time, Vietnam recognizes digital assets. The Draft Law defines digital assets as “assets under civil law, expressed in the form of digital data, created, issued, stored, transferred and authenticated by digital technology in the electronic environment.” Digital assets are further divided into “virtual asset” and “digital asset” categories.

“Virtual asset” is defined as “a type of digital assets that is traded or transferred and can be used for payment or investment purposes. Virtual assets do not include legal currency, securities and financial assets as prescribed by law.” While crypto asset is “a type of digital assets that is created, issued, stored, transferred and authenticated using blockchain technology, distributed ledger technology or other similar digital technology.” The Draft Law emphasizes that: (i) the criteria for classifying digital assets are based on the purpose of use, features, technology and others; and (ii) the classification, management, and provision of digital asset services are implemented according to governmental regulations in accordance with practical conditions.

INCENTIVES FOR DIGITAL TECHNOLOGY BUSINESSES

The Draft Law outlines a range of incentives aimed at promoting the production and provision of digital products and services in Vietnam. Here’s a summary:

- (a) General incentives:
 - (i) Tax incentives: The production and provision of digital products and services are classified as preferential investment sectors, making businesses eligible for tax benefits under Vietnamese investment and tax laws. This may include corporate income tax breaks, import duty exemptions on specific goods, and value-added tax exemptions;
 - (ii) Land incentives: Projects involving digital technology in designated technology zones can benefit from exemptions or reductions in land-use fees according to land laws. Projects focusing on building and operating technical and social infrastructure within these zones may also receive land-use fee exemptions; and
 - (iii) Financial support: Provincial People’s Councils can allocate resources from local budgets to support digital technology activities, including non-refundable support

for innovative start-up projects in this sector.

(b) Special incentives for specific digital products and services:

In case of projects to produce key digital technology products, projects to research and develop, design, manufacture, package, and test semiconductor products, projects to build AI data centers with an investment capital of VND 6,000 billion¹ or more, disbursing at least VND 3,000 billion within three years from the date of being granted the Investment Registration Certificate or Approval of the Investment Policy,² they will enjoy the following incentives and support:

- (i) Corporate income tax and land rental fee benefits as per special investment regulations;
- (ii) Support from investment support funds;
- (iii) Deduction of 150% of actual R&D costs when calculating corporate income tax;
- (iv) Import tax exemptions on fixed assets and raw materials not produced domestically;
- (v) Prioritized customs procedures and tax benefits for imports and exports, including exemption from import and export quota requirements;
- (vi) Direct government support of up to 10% of the total investment for factory construction, technical infrastructure, and equipment from local and central budget development investment funds; and
- (vii) 5-year personal income tax exemption for salaries and wages of highly skilled experts and professionals working on these projects.

In addition, digital technology businesses working on R&D and production of digital products are eligible for state investment credit loans. Projects focused on priority and essential digital products and services can also benefit from interest rate support from the state budget.

POTENTIAL SHORTCOMINGS OF THE DRAFT LAW

The Draft Law, while establishing a foundation for digital asset regulation in Vietnam, it appears to contain some potential shortcomings, such as:

- (a) Heavy reliance on guiding government regulations for implementation: The Draft Law repeatedly states that the government will provide detailed regulations on various aspects, ranging from the production and provision of digital products and services, classification, management and regulation on digital assets, human resource development, international cooperation, conditions and procedures for establishment of a digital zone, incentives for specific digital products and services, criteria, testing principles, authority, process, testing

¹ Approx. USD 235,300,000 (using the exchange rate of USD 1 equivalent to VND 25,500).

² An Investment Registration Certificate or Approval of the Investment Policy is an approval of a Vietnamese licensing authority that allow a foreign or local investor to develop a project. Depending on the scale of the project and/or the industry, an investor is required to obtain either of these approvals (or exempted from obtaining it).

procedures for sandboxes to regulations on semiconductors, etc. They are left in a state of limbo, unsure of the specific rules and requirements they need to comply with until these regulations are issued, which could potentially delay the development of the digital ecosystem in Vietnam;

- (b) Limited attention to decentralized governance and smart contracts: The draft law primarily focuses on tangible digital assets and related services, paying limited attention to the implications of decentralized governance structures and smart contracts. In particular:
 - (i) The Draft Law does not address the legal and regulatory challenges associated with decentralized autonomous organizations (DAOs) and other decentralized governance models. These structures operate without traditional hierarchical management, raising questions about liability, decision-making authority, and legal personality; and
 - (ii) The Draft Law does not explicitly mention smart contracts or provide guidance on their legal recognition and enforceability. Smart contracts are self-executing contracts encoded on a blockchain, and their legal status remains unclear in many jurisdictions.

TIMELINE

There is no set timeline for the National Assembly to ratify the Draft Law. As such, changes are expected before its final ratification.

We hope our article has been helpful to you. Please feel free to contact us if you have any further inquiries.

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