

Decree 13/2023/ND-CP on Personal Data Protection

25 April 2023

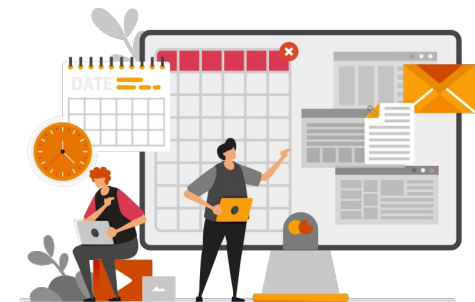
At a glance...

On the 17th of April, the Vietnamese government published a new decree on Personal Data Protection (“PDPD”). As the new regulation will come into effect very soon on 1 July 2023, prior to that date all businesses should perform a gap analysis between the current state of the data protection measures and the new requirements introduced by the PDPD.

In detail...

Selected key points of the PDPD include:

- **New definitions/concepts** e.g. “*basic personal data*”, “*sensitive personal data*”, “*data processor*” and “*data controller*”;
- **Data protection principles** – Personal data should be processed in accordance with the principles of lawfulness, transparency, purpose limitation, data minimization, accuracy, integrity, confidentiality and accountability.
- **Data subject notification** – Data subjects must be notified about, among others, the type of personal data that are collected, the purpose of collection and organisations that have access to the data etc;
- **Data subject consent** - The consent of the data subject is required to process personal data. The consent must be expressly made (no silent default consent) and can be partial or conditional. Data subject has the right to access and review his/her personal data. If the data subject withdraws consent, then the relevant personal data must be deleted within 72 hours.



- **Damage claims**

Data subjects have the right to claim damages if their rights stated in the PDPD are infringed. Also, PDPD makes it illegal to collect, transfer, or sell personal data without the data subject's consent.

- **Incident notification**

Within 72 hours from a data breach or other violation of the PDPD, the personal data controller and the personal data controller cum processor are obliged to notify the Ministry of Public Security of the incident (including the measures taken to minimise the incident's consequences) using the form provided in the PDPD.

- **Impact Assessment**

Within 60 days of the date of data processing, organisations are required to prepare a personal data protection impact assessment. This must be done in accordance with the form provided in the PDPD, including information on the data controller and the data controller cum processor. The impact assessment is subject to evaluation by the Ministry of Public Security (Department of Cybersecurity and High-Tech Crime Prevention and Control). The impact assessment needs to be amended/updated in case of any changes in the personal data processed by organisations.

- **Transfer of personal data abroad**

Transfer of personal data of Vietnamese citizens abroad requires preparation of a relevant impact assessment including description of reasons, purposes of transferring the data abroad and relevant consent of the data subjects. Impact assessment must also include a written data transfer agreement with the foreign entity which receives the data. Dossiers with impact assessments must be available for inspection at the organisation. One copy needs to be sent to the Ministry of Public Security within 60 days from the date of processing of personal data. The PDPD provides the form required for this type of impact assessment. Organisations are also required to update their impact assessment in case of changes (and send an update to the Ministry of Public Security). The Ministry of Public Security has the right to inspect the transfer of data abroad and may prohibit further transfers in case of noncompliance with PDPD.



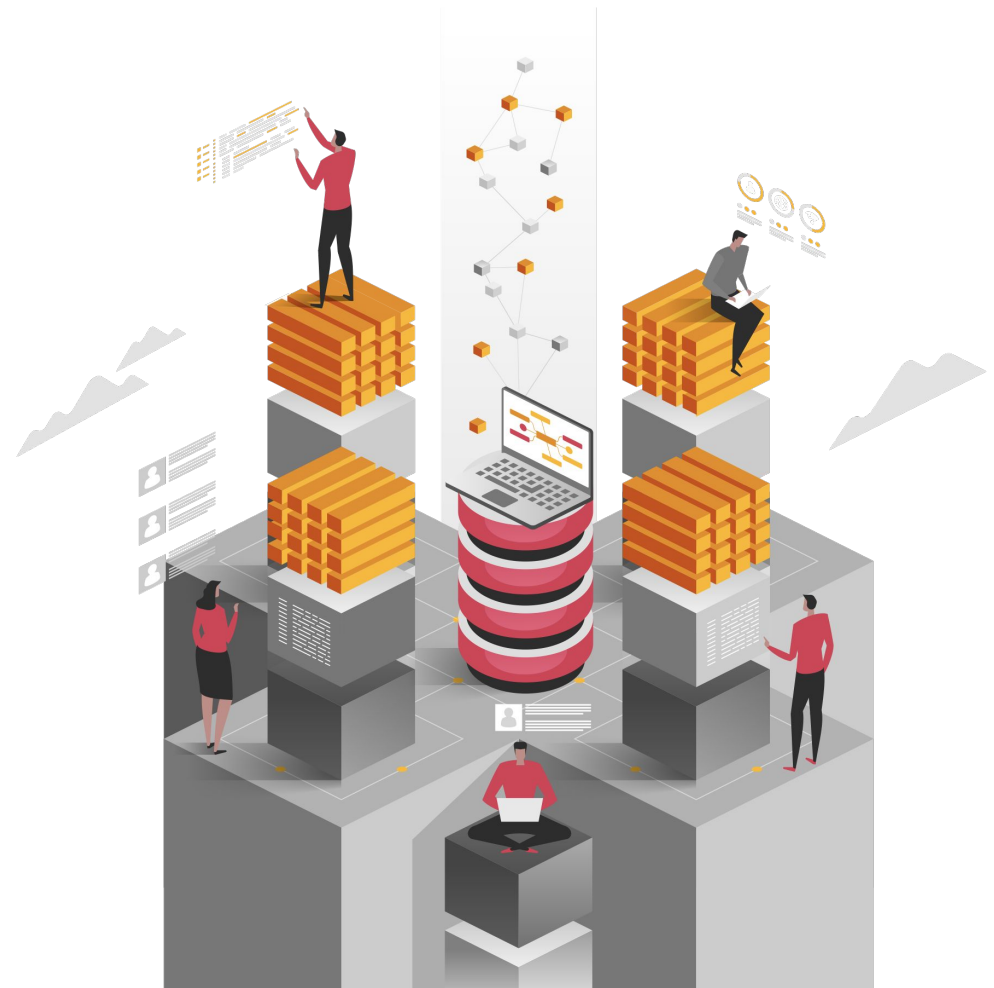
- **Protective measures**

Every organisation needs to promulgate internal procedures on the protection of personal data in line with the PDPD requirements. There are also requirements in relation to network security systems and the ability to delete personal data within the 72 hour time window. The PDPD provides a higher level of protective measures applicable in the case of organisations that process sensitive data and children's data.

- **Sanctions**

Lack of compliance with the PDPD may result in:

- ✓ Administrative sanctions for noncompliance with the PDPD.
- ✓ Criminal sanctions for certain acts infringing the right to privacy.
- ✓ Suspension of certain activities eg. suspension of data transfer abroad.



Contact us

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