



LEGAL UPDATE

LAW ON CYBERSECURITY EXPECTED TO IMPACT FOREIGN INVESTMENT

The Law on Cybersecurity (**LOC**) was adopted by the National Assembly with the 86.86% and will become effective on 1 January 2019.

The LOC regulates activities of protecting the national security and ensuring the social order and safety on cyberspace. The LOC is deemed necessary to protect the data of Vietnamese users as well as national sovereignty. Especially in the current socioeconomic context where hackers, hostile content, fake news and cyber-attacks are worrying both Vietnamese Government and its citizens. The LOC is expected to impact investment as for example it provides for obligations for both foreign and domestic companies with or – currently – without a presence in Vietnam if they provide services in Vietnam over telecom networks or the internet.

Hereafter we will set out some of the main points of the LOC.

1. Scope

The LOC applies to a company whether domestic or overseas that

- provides services via a telecommunications network or the internet, or
 - provides value added online services;
- and collects, exploits, analyses and processes user's data including personal information, information on users' relationships or data created by users in Vietnam.

The services covered are social networks, search engines, online advertising, online streaming and broadcasting, e-commerce websites and marketplaces, internet-based voice or text services (OTT services), cloud services, online games, and online applications.

2. Requirement Offshore Entity

When the company is an overseas entity, it must open a branch or a representative office in Vietnam, which is

currently not required. This means that companies such as Google, Facebook, Yahoo, LinkedIn, Apple, Twitter, and LINE will be required to set up a local entity and meet all other requirements of the LOC such as storing the data of Vietnamese users for a certain amount of time in Vietnam. Experts have indicated that this requirement might violate commitments under the World Trade Organisation, the European Union and Vietnam Free Trade Agreement or the Comprehensive Progressive Trans-Pacific Partnership. These commitments and agreements aim to liberalise trade and minimise technical barriers to trade, which does contradict the effect the LOC is expected to have.

3. Information Check Requirements

The LOC also requires that a company prevents posting of information that infringes national security, social order and safety, as well as legitimate rights and interests of organisations and individuals. In case it is posted the company must remove it. If the competent Vietnamese authorities request information on Vietnamese users for the purpose of investigating and handling violations of the LOC the company must cooperate. The company is also required to authenticate the user's information upon registration. The latter requirement could affect the right to personal freedom and is also contrary to the company's commitment to customers with regard to confidentiality. It might be another reason for foreign investors to refrain from investing in Vietnam.

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