



Cyber Security and Cyber Information Safety Regulations in Vietnam

DATA PROTECTION & CYBER SECURITY FROM THE ANGLE OF CPTPP, EVFTA & INVESTMENT PROTECTION TREATIES

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- Corporations, M&A & Securities
- Investment and restructuring
- Banking, Finance & Capital Markets
- Insurance
- Real Estate & Construction
- Petroleum, Mining & Energy
- Infrastructure, Transport & Logistics
- Trade Policy & Competition
- Tax & Transfer Pricing
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- Alternative Dispute Resolution: Mediation, Arbitration



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LOCAL INSIGHTS MEET INTERNATIONAL EXPERTISE

- A full service law firm with a seasoned team of multi-disciplinary professionals
- In-depth understanding of the legal system, business environment, and cultural background in Vietnam.
- Offices: Hanoi and Ho Chi Minh City
- Professional staff: 25
- Languages: Vietnamese, English, Japanese, French, Chinese, Korean



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INTERNATIONAL AWARDS



- **Legal500, Chambers & Partners, IFLR 1000, Asialaw Profiles** and Legalese's **Tax Director Handbook** (global legal directories & ranking agencies) and international professional magazines list VCI Legal among the top law firms in Vietnam for: *M&A, competition law, banking and corporate, insurance, taxation, intellectual property, investment*



- **Acquisition International Magazine:**

- *Vietnam Corporate Law Firm of the Year 2012-2014*
- *M&A Vietnam Law Firm of the Year 2013*
- *Real Estate Law Firm of the year 2012-2013*



- **ACQ Global Magazine:**

- *Vietnam Banking & Finance Law Firm of the Year 2012-2013*
- *Vietnam Capital Markets Law Firm of the Year 2012-2013*
- *Vietnam Corporate Law Firm of the Year 2012-2013*
- *Vietnam M&A Law Firm of the Year 2012-2013*



- **Finance Monthly – Law Firm of the Year 2011-2013**

- **Corporate LiveWire – M&A Vietnam Law Firm of the Year 2012-2013**

- **Asialaw - Highly Recommended Firm for the Year 2014**





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SERVICES OVERVIEW | 1

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WHAT SET VCI LEGAL APART?

- **A “Can Do” Attitude** combining with a **“Know How” Capacity**
- True sense of **“Lawyer for business”** independent legal professionals who were trained & practiced in international environment
- Most key personnel are lawyers with **in-house counsel experience and deep “local” business insights**
- Not only legal practitioners but also business managers who are willing to bring **“some skin in the game”**
- Strong **professional & cultural background**
- Committed to provide not only the best legal services but also the most **effective & practical business solutions**
- **Team player and partnering with clients** in resolving business issues

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Cyber Laws in Vietnam



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Key regulations on data protection & Cyber Security

- Law on Cyber Security 2018 (CSL)
- Law on Information Technology in 2006
- Law on Cyber Information Security of 2015 (CISL)
- Law on Electronic Transactions
- The Constitution
- Civil Code 2015

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CSL Introduction

- Passed in 2018 & effect on 1 Jan 2019 with one-year grace period for ISP to comply with
- Together with laws on private data and e-transaction
 - aims at staving off cyber attacks
 - weeding out “hostile and anti-revolutionary forces”
 - using the Internet to stir up violence, dissent and

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CSL Applicability

- Applicable to both domestic and foreign entities
- providing services through telecommunication networks, the Internet, or value-added services on cyberspace to customers in VN; or
 - involved in the *collection, exploitation, analysis and processing* of personal information,
 - data about users' relationship and data generated by users in Vietnam

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CSL Applicability - 1

Interpreted broadly, applicable to :

1. social networks, search engines,
2. online advertising, online broadcasting and streaming, e-commerce
3. websites and marketplaces, internet-based voice/text services,
4. cloud services, online games and other online applications.

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CSL Applicability - 2

Implementing decree narrowed down scope of **data localization and local presence requirements applicable only** for service providers who:

1. Allowing users to commit *cyber attacks, cyber crimes* or other acts *disturbing national security & public order*; or
2. *Violating the CSL* (e.g., fail to provide personal data to the Government or remove illegal content)

--> Criticism: Open to broad interpretation & application

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CSL Data Localization

Entities subject to data localization requirement must:

- store the personal data of end-users in Vietnam for the legally prescribed period of time (indefinitely for personal data & 36 months for other data); and
- surrender such data to Vietnam Governmental authorities upon request

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Data Localization Requirement

Implementing decree made data localization more ambiguous:

- an exceedingly **large amount of data** required to be stored in VN;
- restrictions of **freedom of data storage and usage of modern technologies** of enterprises; and
- Increased the **costs of compliance** for ISP especially foreign ones
- Local government claim control and access yet **private data ownership are not clear**

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Data Localization Requirement

Data to be locally stored includes:

- **Personal data** (e.g., name, DOB, place of birth, ID info, address, phone, job, medical report, biometrics,);
- **Data created by users** (e.g., uploaded info and synchronization or input from devices); and
- **Data re users' relationship** (e.g., friends or groups users connect or interact with)

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Data Retention Conflict

- ❑ Electronic Transaction Law:
 - ❑ Applicable to companies carrying out E-commerce, E-transaction or any activities involving data security issues in cyberspace
 - ❑ Requirement of data retention already exist yet the Cybersecurity Law repeat this with potential conflict in the retention period
- ❑ Law on Credit Institution retention terms

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Local Presence Requirement

- ❑ Under the SCL, all offshore service providers are required to open local offices.
 - ❑ However, the implementing decree only provide some providers to have local office:
 - Letting users to commit cyber-attacks, cyber-crimes or other acts disturbing national security & public order;
 - Violating the Cybersecurity Law (e.g., failing to provide personal data to Gov or remove illegal content)
- * service providers must monitor the online activities of users & turn over data to MPS once required.

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Content Control & Censorship

- ❑ CSL requirements for online service providers
 - ❑ supervise user's post & remove "prohibited contents" within 24 hours of receiving a request government agencies
 - ❑ stop providing an Internet connection to such user
 - ❑ ISP compelled to provide user info to agencies which may be against their own terms of services & possibly laws of other countries

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CISL Personal Info Protection

- The **collection, storage, usage & transfer** of users' information must come with the **consent of owner or request of government agencies**
- Consistent with Universal Declaration of Human Rights 1948 including
 - the freedom to access to, seek, receive and impart information online,
 - the right to own property (online personal data)
- Yet **ownership of personal data** are not yet clearly localized under domestic laws

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CISL Personal Info Protection

- all agencies, organizations & individuals are required to **ensure cyber information security**
- CISL prohibits
 - illegal collecting, utilizing, spreading or trading personal data,
 - hacking information systems to collect or exploit personal info
- CISL breaches might be **administratively or criminally sanctioned**

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Vietnam's commitment to investment protection - CPTPP, ASEAN IPA & **EVIPA**



IPA & ISDS

- Vietnam is a member of many Investment Protection Agreements (IPAs) which incorporate Investor-State Dispute Settlement (ISDS) mechanism to protect foreign investments
- Some notable IPAs
 1. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP),
 2. ASEAN Comprehensive Investment Agreement (ACIA)
 3. EU Vietnam Free Trade Agreement (EVFTA)
 4. EU Vietnam Investment Protection Agreement (EVIPA)
 5. ASEAN-China Investment Agreement
 6. Vietnam-Korean FTA; and
 7. Vietnam-US Bilateral Trade Agreement

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Vietnam's obligations

Most important investment protections obligations under CPTPP, ACIA & EVFTA relevant to CSL regulations:

- National Treatment;
- Non-performance: not to impose/enforce ***forced transfer of technology, production process, or other proprietary knowledge*** to its territory
- Ensure **fair & equitable treatment** with full protection and security.
- **Comply with the EU General Data Protection Regulation ("GDPR")**

Breach of these obligations would be considered grounds for ISDS proceedings

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National Treatment Violation

- Art 5.1 of ACIA; art 9.4 of CPTPP, art 2.3 Chapter 2 of EVFTA: “*Each Member State shall accord to investors of any other Member State treatment*
 - *no less favourable than it accords, in like circumstances, to its own investors*
 - *with respect to the admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.*”

- Requirements for **data localization & local office** might be in breach since:
 - **technically they are also applicable to domestic entities yet practically, these are additional requirements applicable only for foreign investors**
 - foreign investors subject to **higher cost & more formalities** despite 1 year grace period, it is still a financial & technical burdens

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Operational Violations

- Additional responsibility for ISP to monitor the online activity of consumers and turn over to the MPS
 - Addition costs and responsibility
 - In the example of Huawei & Chinese legal requirement for companies to cooperation & provide users information → this may jeopardize the competitiveness & access of companies in Vietnam in overseas markets

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Fair & Equitable Treatment?

Potential violations

- Art 11.1 of ACIA *"Each Member State shall accord to covered investments of investors of any other Member State, fair and equitable treatment and full protection and security."*
 - Can be a 'catch-all' clause for investors, allowing them to succeed where their other grounds have failed
- Similarly, Art 2.5 Charter 2 of EVIPA "Each Party shall accord fair and equitable treatment and full protection and security to investors of the other Party and covered investments..."

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Fair & Equitable Treatment?

Potential violations

- Art 14.13 of CPTPP (Vietnam reserves 2-year reservation on this)
*“No Party shall require a covered person to **use or locate computing facilities in that Party’s territory as a condition for conducting business in that territory.**”*
- CSL might be in breach of the above. While it’s not a ISDS ground per se, parties to CPTPP can initiate a legal proceeding against Vietnam through WTO dispute resolution forum

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GDPR compliance?

GDPR regulations

- Right to be forgotten: the data subject has the right to request the controller to erase his/her personal data without undue delay (Article 17 of GDPR).
- Right to restrict processing: the data subject has the right to request the controller to restrict the processing where the accuracy of the personal data is contested by the data subject; the processing is unlawful; and the controller no longer needs the personal data for the purposes of the processing (Article 18 of GDPR).

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GDPR compliance?

Potential violations

- ❑ Article 26 of CSL provides that providers of telecommunications services, internet services and value-added services in Vietnam's cyberspace that collect, analyze or process private information or data about relationships of their service users or data created by their service users in Vietnam shall retain such data for a specific period of time.

- ❑ Data localization requirement under the CSL can be in conflict with the "Right to be forgotten" under the GDPR if the data subject request the controller to erase his/her personal data.

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GDPR compliance?

Potential violations

- Article 26.2 of CSL provides that providers of telecommunications services, internet services and value-added services in Vietnam's cyberspace have the responsibility to provide users' information for professional cybersecurity forces of the Ministry of Public Security upon request in writing to serve investigation into cybersecurity violations.

- The obligation to hand over users' information upon request to the cybersecurity forces of the Ministry of Public Security of Vietnam under the CSL can be conflict with the "Right to restrict processing" and the "Right to be forgotten" under the GDPR.

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