

Law on Digital Technology Industry (Version 4.0)

– Vietnam is at the forefront of regulating artificial intelligence (AI) and other cutting-edge technologies –

Asia & Data Protection Newsletter

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1. Introduction

Vietnam is taking a significant step forward, and will regulate almost all of the cutting-edge technologies in the world upon the future enactment of the Law on Digital Technology Industry currently in the drafting stage (“**Draft DTI Law**”). The Draft DTI Law covers a broad spectrum of digital technologies, such as artificial intelligence (AI), big data, cloud computing, the Internet of Things (IoT), blockchain, and virtual/augmented reality. The Draft DTI Law aims to create a robust legal framework that fosters innovation and technological advancement by providing substantial support and incentives for businesses, underscoring Vietnam’s bold goal to become a global hub for digital technology. However, it also will impose state management on emerging technologies not yet specifically regulated under Vietnamese law.

The major goal of the Draft DTI Law, as mentioned by a representative of the Committee for Science, Technology and Environment of the National Assembly of Vietnam (“**NACSTE**”), the agency in charge of examining the Draft DTI Law, is to promote and incentivize the development of the digital technology industry in Vietnam, rather than focusing on strict state management.¹ In other words, it seems that Vietnam will take a “*light touch*” approach to governing these novel technologies, in order to promote development and innovation in these areas. According to NACSTE’s representative, the Draft DTI Law was approved by the Government of Vietnam on 27 August 2024, currently is being finalized for submission to the National Assembly of Vietnam by mid-September 2024, and is set to be discussed by the National Assembly of Vietnam in October this year. Thereafter, the plan is for the National Assembly of Vietnam to adopt the Draft DTI law in the second quarter of 2025.

This newsletter discusses some notable regulations in the Draft DTI Law and its potential impact on tech businesses in Vietnam.

2. Introduction of the First AI and AI Systems Regulations in Vietnam

The Draft DTI Law defines an “AI system” as a digital technology product that simulates human intelligence, using information and digital data to perform automatic analysis, reasoning, content generation, forecasting, recommendations, and decisions based on a set of goals determined by humans.² In principle, the

¹ This remark was made by Nguyen Phuong Tuan (Deputy Head of the NACSTE) during a workshop on the Draft DTI Law co-hosted by the NACSTE on 29 August 2024.

² Draft DTI Law, Article 3.6

development, provision, and use of AI systems must comply with a range of requirements, including without limitation: (i) ensure the principle of people-centeredness, and improve productivity and work efficiency, (ii) serve and protect human rights and interests, and (iii) not replace humans or exceed human control.³

The Draft DTI law governs AI systems based on two levels of risk, specifically high-risk and non-high-risk.⁴ A high-risk AI system is defined in the law as an AI system that has a possibility of: (a) causing risks and harm to the health, safety, legitimate rights, and interests of organizations and individuals, (b) having high impact capability, a large impact range, a large number of users, and a large amount of accumulated computation used for training, and (c) not qualifying as any type of non-high-risk AI system.⁵ A non-high-risk AI system is defined as an AI system that serves one of the following purposes: (i) performing a task within a narrow scope, (ii) improving the results of performance previously completed by humans, or (iii) detecting and recommending differences from previous results.⁶

The Draft DTI Law also imposes a variety of obligations on developers and providers of AI systems. Many of these obligations seem general and vague, suggesting compliance difficulties will arise in the absence of proper guidance. These obligations include (without limitation):⁷

- (i) Taking measures to ensure equality, fairness, and non-discrimination against users;
- (ii) Protecting privacy and personal information, promptly handling requests for lookup, copying, editing, supplementing, and deleting personal information in accordance with the law on personal data protection;
- (iii) Establishing a mechanism for technical supervision and audits in accordance with the law;
- (iv) Logging information about the development and management of the AI system; and
- (v) Performing a safety risk assessment before provision of the AI system.

The Draft DTI Law also requires all digital technology products created by an AI system to be labeled for identification purposes.

Based on our observations, these AI regulations in the Draft DTI Law are preliminary and vague, and require further improvement for ease of enforcement. For instance: (a) as can be seen, the classification of AI systems (particularly the criteria for identifying high-risk AI systems) in the Draft DTI Law is vague, and has no quantitative criteria, which may result in the classification of a large number of AI systems as high risk, unless there is more detailed guidance, (b) although AI systems are categorized in two groups, there seems to be no difference in treatment between the two, which makes the classification appear unnecessary, (c) some unreasonable obligations are being imposed on AI system developers, which create practical difficulties in terms of compliance, for example, the developers might be unable to comply with obligation (ii) above, because they do not control the users or their data, and (d) while it seems that digital technology services are not subject to the labeling requirement, it remains unclear whether this regulation is technically feasible for all current and

³ Draft DTI Law, Article 60.1

⁴ Draft DTI Law, Article 61

⁵ Draft DTI Law, Article 61.1

⁶ Draft DTI Law, Article 61.2

⁷ Draft DTI Law, Article 62

future types of digital technology products, given the broad scope of digital technology products set to be governed by the Draft DTI Law.⁸

3. Sandbox Mechanism for Convergence of Digital Technologies (“Sandbox Mechanism”)

The Draft DTI Law contains a “Sandbox Mechanism” for controlled piloting of products and services involving digital technology convergence,⁹ pursuant to which the competent authority will allow controlled piloting of these products and services within a limited scope of space, time, scale, and testing objects, while the relevant entities are entitled to the rights and subject to the responsibilities contained in the law.¹⁰ This Sandbox Mechanism will be granted to businesses for certain periods of time (currently 3 years, which will be reduced to 2 years in next draft version) with regard to products and services involving technological convergence that are unregulated or differently regulated under current regulations.¹¹ A representative of the drafting agency (i.e., the Ministry of Information and Communications (“MIC”))¹² indicated that the Sandbox Mechanism is designed to enter into force immediately with the new law, without any detailing or guiding legal documents. In particular, the Draft DTI Law sets forth the criteria for application for the Sandbox Mechanism, along with its application procedures, implementation procedures, extension and finishing procedures, the rights and obligations of the enterprises carrying out the Sandbox Mechanism, certain legal immunities, and a variety of other details about the Sandbox Mechanism.¹³

Introduction of this Sandbox Mechanism appears to suggest that authorities in Vietnam are sensitive to and cautious about novel products and services resulting from technological convergence. However, it also suggests that the authorities will not force a dead end to tech and digital innovation, or even slow it down; instead, they promise to support actively, using this Sandbox Mechanism. As a result, it is recommended that tech businesses monitor the development of tech regulations in Vietnam closely, and take advantage of the Sandbox Mechanism appropriately when developing or inventing new products and services that utilize cutting-edge digital technologies.

⁸ Under Article 3.5 of the Draft DTI Law, digital technology products and services include information technology products and services, and new digital technology products and services, including but not limited to artificial intelligence, big data, cloud computing, internet of things, blockchain, virtual reality/augmented reality to digitize the real world, collecting, storing, transmitting and processing information and digital data.

⁹ As defined by Article 3.7 of the Draft DTI Law, digital technology convergence is an activity involving innovation, creativity, and creation of new value by integrating, combining, and merging digital technologies with each other or by merging digital technologies with products and services from other industries and fields to create products and services involving technology convergence.

¹⁰ Draft DTI Law, Article 47.1

¹¹ Draft DTI Law, Article 48

¹² Nguyen Khac Lich (Head of the Authority of Information Technology and Communications Industry under the MIC), speaking during a workshop on the Draft DTI Law co-hosted by the NACSTE on 29 August 2024.

¹³ Draft DTI Law, Articles 48, 49, 50, 51, 52, 53 and 56

4. Digital Data (Input and Output) Regulations

Quality control of input data

The Draft DTI Law requires input digital data used in the digital technology industry to be in line with compulsory technical regulations to be issued by the MIC, to ensure data quality, and states that businesses are obligated to conduct self-assessments and conformity declarations regarding their input digital data.¹⁴ These regulations, *if adopted*, signal the potential introduction of a number of national technical requirements by the MIC; businesses offering digital technology products and services should study these requirements, and be prepared to take prompt action and ensure compliance.

Portability of customer digital data

Providers of digital technology products and services are responsible for providing customers with tools and technical solutions to transfer the customers' digital data to digital products and services provided by other providers.¹⁵ Given the broad scope of the Draft DTI Law, which covers all agencies, organizations, and individuals engaging in or related to the digital technology industry,¹⁶ it appears that all tech businesses providing cross-border digital technology products and services to users in Vietnam will be subject to this obligation.

This regulation appears to be both unreasonable and impractical. More specifically, the definition of digital technology products and services has such a broad scope that it covers an indefinite number of products and services,¹⁷ resulting in a situation in which it is burdensome, costly, and in many circumstances not feasible for the providers of digital technology products and services to provide tools and technical solutions for the transfer of their customers' digital data to other providers. As a result, for purposes of compliance, tech businesses, including offshore businesses, may incur unreasonable costs in connection with required investments (e.g., the costs of required tools, technical systems, and human resources to ensure the capacity to make the data transfers required by the Draft DTI Law) to facilitate consumers' data portability, despite the rapid development and emergence of new digital technologies.

Compulsory sharing and updating of digital data between businesses and the state's digital technology industry database

The Draft DTI Law states that the MIC will develop and manage a digital technology industry database, which incorporates a variety of information, including, without limitation, information about digital technology enterprises (e.g., general information, human resources, digital technology products and services, financial

¹⁴ Draft DTI Law, Articles 17.2 and 21

¹⁵ Draft DTI Law, Article 19.3

¹⁶ Draft DTI Law, Article 2

¹⁷ Under Article 3.5 of the Draft DTI Law, Digital technology products and services include information technology products and services and new digital technology products and services, including but not limited to artificial intelligence, big data, cloud computing, internet of things, blockchain, virtual reality/augmented reality to digitize the real world, collecting, storing, transmitting and processing information and digital data.

statements and other information).¹⁸ The Draft DTI Law also requires digital technology enterprises to share information for inclusion, and update relevant information, in this database, either on a periodic basis or upon request from the competent authority.¹⁹ Similar to the obligations relating to customer digital data portability, this obligation appears to apply to tech businesses providing cross-border digital technology products and services to users in Vietnam.

The information mentioned above is presented vaguely in the Draft DTI Law, with no limitations or exceptions, and poses a risk of disclosure of important (including confidential) business information or trade secrets which, if disclosed, may cause damage to the competitiveness and business operations of tech businesses.

5. Conclusion

Though the Draft DTI Law represents a positive milestone for Vietnam's digital transformation journey, it still appears to be immature, with incomplete regulations, and should undergo thorough review and revision before official promulgation. Given the law's importance and the great impact it will have the technology industry in Vietnam, it is imperative for tech businesses to stay informed about, and prepared for the potential changes that may arise from, this important legislation.

Our firm is committed to supporting businesses through this dynamic period, providing the insights and guidance necessary to navigate the complexities and capitalize on the opportunities presented by this and other emerging legislation. Please feel free to reach out to us if you have any questions or need any assistance.

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¹⁸ Draft DTI Law, Article 35.2

¹⁹ Draft DTI Law, Article 37.1