

LEGAL UPDATE VIETNAM

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Decree No. 147/2024/ND-CP on the management, provision, and use of Internet services and information in cyberspace

On 09 November 2024, the Government issued Decree No. 147/2024/ND-CP on managing, providing, and using internet services and information in cyberspace ("Decree 147"). Decree 147 is effective from 25 December 2024, replacing Decree 72/2013/ND-CP regulating the same topic and its amendment, Decree 27/2018/ND-CP. Below, we provide a summary of crucial aspects of the Decree.

1. Cross-Border Information Provision

Decree 147 applies to businesses that provide information across borders, like Google, Meta, and Netflix. To be more specific, offshore service providers that provide information on a cross-border basis and (i) lease data storage in Vietnam or (ii) have total monthly visits from Vietnam (average statistics over 06 consecutive months) of 100,000 or more ("Regulated Offshore Service Providers") are required to do the following:

- Notify the Ministry of Information and Communications ("MIC") of their contact information;
- Inspect, monitor, and remove information, services, and applications that are against the law;
- Prevent and remove information, services, and applications that violate the law at the request of the authority according to the strict procedures timeline as prescribed;
- Enter into content cooperation agreements with Vietnamese press agencies when providing information quoted from Vietnamese press;
- Store and manage service user information and provide such information to the authority at its request;
- Verify social network user accounts;
- Take measures to protect children in cyberspace, such as displaying content warnings;

- Procure electric tools to receive and handle complaints from service users;
- Provide tools for content searching and scanning as required by the authorities;
- Submit periodic and ad-hoc reports to the MIC.

2. Requirement to Verify Social Network User Accounts

Among the obligations, “verifying social network user accounts” will significantly impact the management and use of cyberspace. This requirement applies to Regulated Offshore Service Providers, domestic organizations, and enterprises providing social network services per Article 23.3(e) and 27.3(b) of Decree 147. Decree 147 defines a “social network” as an information system established on a website or online application platform, providing services and tools that allow service users to offer, exchange, interact, and share information.

Applicable entities operating social networking businesses must apply the following rules to verify user accounts.

- A Vietnam mobile phone number is the preferred method to verify the account of users located in Vietnam. If the user confirms that they do not have a Vietnam mobile phone, the account can be verified using a Vietnam government-issued personal identification number.
- If the social network user uses a livestream (real-time audio and video) feature for commercial purposes, they must verify their accounts using a Vietnam government-issued personal identification number.
- Entities must ensure that only verified account holders can post information (write articles, comment, and livestream) and share information on social networks.

These regulations arise from the need for state oversight, and the necessity to manage social network accounts better to reduce online fraud, scams, and fake news. They aim to increase users’ awareness, encouraging them to be more cautious when sharing information or commenting on social networks.

Decree No. 124/2024/ND-CP amending and supplementing Decree No. 86/2018/ND-CP regulating foreign cooperation and investment in the field of education

On 05 October 2024, the Government released Decree No. 124/2024/ND-CP ("Decree 124") to amend and supplement the existing regulations set out in Decree No. 86/2018/ND-CP regulating foreign cooperation and investment in education. This Decree 124 came into effect on 20 November 2024 with several notable points as follows:

1. Expanded Subjects and Tighter Regulations for Foreign Partners in Joint Education

The definition of "joint education" is broadened under Decree 124 so that Vietnamese preschools and general education institutions can cooperate with foreign "educational organizations," i.e., organizations providing educational programs established abroad, such as Head Start in the United States, in addition to foreign "educational institutions" as previously.

Decree 124 also imposes more stringent requirements for foreign partners, including educational institutions and organizations involved in joint education:

- As for foreign educational institutions, they must be duly established and operating abroad for at least 05 years as of the date of application submission, without violating the laws of the host country during their operational period, provide direct teaching, hold a valid quality accreditation certificate, or are recognized for educational quality by a competent foreign authority or organization;
- As for foreign educational organizations, such organizations providing educational programs must be duly established and operating abroad and have a minimum of 05 years of experience in offering preschool or general education programs as of the application date for joint education.

2. Branch Campuses of Foreign Universities and Foreign Training Programs

Under Decree 124, besides other requirements, only universities ranked among the top 500 higher education institutions in prestigious global university rankings in one of the three most recent years are eligible to establish branch campuses in Vietnam.

In terms of foreign training programs, the following requirements, among others, must be satisfied:

- Be a program from a foreign higher education institution, authorized by the relevant authority in that country to offer training and award degrees or hold a valid quality accreditation certificate issued by a legally recognized accrediting organization;
- It must not contain content harmful to national defense, security, or public interests; it must not propagate religion, distort history, or negatively impact Vietnamese culture, ethics, or customs.

Decree No. 128/2024/ND-CP amending Decree No. 81/2018/ND-CP on commercial promotion activities

On 10 October 2024, Decree No. 128/2024/ND-CP was issued to amend the existing Decree No. 81/2018/ND-CP on commercial promotion activities ("Decree 81"), effective from 01 December 2024 ("Decree 128"). The following are some critical points of Decree 128:

1. Maximum Value of Promotional Goods or Services

Both Decree 81 and Decree 128 state that the value of promotional goods or services shall not exceed 50% of the sale price of the promoted products or services. Decree 128 elaborates that the sale price used for the calculation shall be immediately before the promotion period begins.

2. Removing Time Restrictions for Concentrated Promotional Programs

Under Decree 81, concentrated promotional activities organized by state agencies (typically, the Ministry of Industry and Trade) were restricted to specific timeframes, such as certain hours, days, weeks, months, or seasons.

However, many stores and centers nationwide now specialize in selling items like overstocked goods, outdated products, or defective items to support the local economy and enhance product consumption. The limitation on promotional periods reduced the operational effectiveness of these establishments.

Decree 128 removes the time constraints for conducting such concentrated promotional activities to address this, allowing for greater flexibility and improved efficiency.

3. Prior Notification for Promotion Activities

Decree 128 relaxes the notification requirements by eliminating the need for prior notification for the following five categories of promotion activities:

- Organizing cultural, artistic, or entertainment programs or other events for customers for sales promotion;
- Providing sample goods or services free of charge;
- Giving goods or services as gifts free of charge;
- Selling goods or providing services at discounted prices during the announced period of sales promotion;
- Selling goods or providing services together with coupons.

Accordingly, under Decree 128, the notification obligation is only required for the remaining two forms of promotion:

- Selling goods or providing services together with a contest entry form for selecting the prize winner according to rules and prizes already announced;
- Holding programs for regular customers.

However, if the total prizes or gifts are valued under VND 100 million or such activities are conducted exclusively through e-commerce platforms and online advertising websites, they are exempt from this notification requirement.

Decree 128 requires notification via the National Public Service Portal rather than the Department of Industry and Trade website, as provided in Decree 81 for the remaining activities subject to notification obligations.

Circular No. 06/2024/TT-BKHCN to amend Circular No. 11/2015/TT-BKHCN guiding Decree No. 99/2013/ND-CP on penalties for administrative violations against regulations on industrial property

On 30 September 2024, the Ministry of Science and Technology issued Circular No. 06/2024/TT-BKHCN to amend Circular No. 11/2015/TT-BKHCN ("Circular 11") guiding Decree No. 99/2013/ND-CP on penalties for administrative violations against regulations on industrial property ("Circular 06"). Under Vietnamese law, "industrial property" includes patents, trademarks, trade secrets, and other intellectual property rights except for copyright and rights to plant varieties. Here are some fundamental changes introduced in Circular 06.

1. Amendments to the Penalties for Administrative Violations against Regulations on Industrial Property

Circular 06 provides the following guidance concerning penalties found in Article 3.2(c) of Decree No. 99/2013/ND-CP, i.e., suspending part or all of production, business, and service activities:

- When applying the supplementary penalty stipulated in Article 3.2(c) of Decree No. 99/2013/ND-CP, the authorized administrative sanctioning officer shall suspend part or all the production, business, or service activities of the violating organization or individual. The suspension must apply to production, business, or service activities directly related to the administrative violation being sanctioned.
- A full suspension of production, business, or service activities for the violating organization or individual shall be applied when the entirety of these activities is directly related to the administrative violation being sanctioned. For example, suppose a factory produces shoes and sandals. If the violation is only associated with shoe products, the authorities will suspend shoe production, and sandal production will not be affected. If the breach of industrial property involves the entire product line of such a company, then all production will be suspended.

2. Wrong Indication Concerning an Industrial Property License Agreement

Circular 06 adds a new instance of a wrong indication as a violation of industrial property rights. Specifically, per Article 1.5 of Circular 06, the wrongful indication involves marking goods or packaging with phrases like “manufactured under a license agreement with [holder of the industrial property]” or similar expressions coupled with the following scenarios:

- The user is not licensed to use the industrial property subject under applicable law;
- There is a license agreement between parties for using the industrial property subject, but the indication contains incorrect information, such as the name or contract number.

In short, Circular 06 makes providing a wrong indication concerning an industrial property licensing agreement a violation of industrial property rights.



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