

## Vietnam's Personal Data Protection Decree FAQs

Last updated: March 2024

### 1. What Is the PDP Decree?

Decree No. 13/2023/ND-CP issued by the Government of Vietnam on 17 April 2023 on Personal Data Protection<sup>1</sup> (the "**PDP Decree**") is Vietnam's first legal text wholly dedicated to personal data protection. By adopting the PDP Decree, the Government pursued the following three main objectives: (1) consolidation of various rules on personal data protection in a single normative document; (2) centralisation of the Government's oversight of processing and transfers abroad of personal data of Vietnamese citizens; and (3) convergence toward international regulatory practices in the area. The adoption of the PDP Decree is intended to be a first step towards consolidating the legal framework on personal data protection in a comprehensive law on data privacy scheduled to be adopted in 2024.

The PDP Decree sets out, among other things, a broad scope of application, a more comprehensive definition of personal data, regulated stakeholders, more stringent forms and requirements of consent, and prerequisites for general data processing and offshore data transfer. The PDP Decree came into effect on 1 July 2023, with all requirements becoming immediately applicable, with some exceptions for small enterprises.

The Ministry of Public Security ("**MPS**") is still working on a decree on sanctions applicable to breaches of the PDP Decree. No further official guidance (usually in the form of ministerial circulars) has been published so far. A number of forms that were subsequently issued by the MPS to implement the requirements of the PDP Decree were published without any explanation, which has resulted in widespread uncertainty and dissatisfaction among the organisations involved in the collection and processing of personal data in Vietnam.

### 2. What Is the Territorial Scope of the PDP Decree?

The PDP Decree has a broad scope of application: not only does it apply to personal data collection and processing activities regardless of the context, it also applies to **both domestic and foreign organizations** and individuals (1) processing personal data in Vietnam and (2) processing personal data of Vietnamese citizens, in both cases regardless of whether the data collecting or processing entity has a physical presence in Vietnam.

### 3. What Does It Mean to Process Personal Data?

The PDP Decree defines "personal data" as information in the form of symbols, letters, numbers, images, sounds, or the like in an electronic environment that is either associated with a particular person or may help to identify a particular person.

The PDP Decree defines "processing" as activities affecting personal data, such as collecting, recording, analyzing, confirming, storing, editing, disclosing, combining, accessing, retrieving, encrypting, decrypting,

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<sup>1</sup> The full text in Vietnamese as published in the Official Gazette can be found at <https://congbao.chinhphu.vn/loi-dung-van-ban-so-13-2023-nd-cp-39228> and the unofficial English translation can be found at [Nghị định 13/2023/NĐ-CP bảo vệ dữ liệu cá nhân mới nhất \(thuvienphapluat.vn\)](#) (a subscription may be required).

copying, sharing, transmitting, providing, transferring, deleting, destroying personal data or other related actions.

#### 4. What is a Personal Data Controller, Personal Data Processor and Personal Data Controller & Processor?

The PDP Decree introduces the following three processing roles:

- **“Personal Data Controller”** which refers to an individual or an organisation deciding on the purpose or method of processing personal data.
- **“Personal Data Processor”** which refers to an individual or organisation engaged in data processing on behalf of a Personal Data Controller through a contract or agreement with the Personal Data Controller.
- **“Personal Data Controller & Processor”** which refers to an individual or organisation engaged in both of the above simultaneously. This new concept does not seem to have any equivalent in the European Union's General Data Protection Regulation and similar acts in other countries.

#### 5. What Rights Do Individuals Have under the PDP Decree and How Will Autodesk Support these Rights?

Under the PDP Decree, data subjects have the right to:

- be informed of their data collection and processing;
- grant and withdraw consent;
- access and correct collected personal data (request to be satisfied within 72 hours);
- object to data processing (to be satisfied within 72 hours);
- request deletion of personal data (within 72 hours of request);
- obtain restrictions on data processing (to be satisfied within 72 hours);
- complain, denounce and/or initiate lawsuits;
- claim damages; and
- take measures to protect their personal data.

#### 6. What is required to transfer personal data from Vietnam?

The PDP Decree permits cross-border transfers of data from Vietnam to other jurisdictions, subject to certain conditions. In addition to the data subject's consent, any transfer of personal data outside of Vietnam is subject to compliance with the following requirements:

- (a) submission of a Cross-border Transfer of Personal Data Impact Assessment Dossier ("**TIA**") to the MPS within 60 days of the commencement of personal data processing (not of the transfer) and keeping it available at all times for inspection (the MPS has the right to request more information to be added to the TIA);
- (b) written notification to the MPS of the completion of the cross-border transfer including information on the transferred data and contact information of the "organisation or individual in charge" (not defined); and
- (c) the transferring party must update the TIA if there are changes to the information previously submitted.

The MPS can suspend cross-border transfers of data if:

- (a) the transferred personal data is used to harm the national interests and security of Vietnam;
- (b) the transferring party does not comply with the MPS' request to supplement or update the TIA;
- (c) or personal data of Vietnamese citizens were disclosed or lost.

## 7. Does the PDP Decree Require Personal Data to Stay in Vietnam?

The PDP Decree is silent on data localization requirements. These requirements are set out in a separate Decree No. 53/2022/ND-CP issued by the Government of Vietnam on 15 August 2022 providing guidance on the implementation of certain articles of the Law on Cybersecurity (2018) ("**Decree 53**", effective on 1 October 2022).

Decree 53 provides that data of organizations and individuals using cyberspace in the territory of Vietnam ("**service users**"), including personal information of service users, data created by service users and data on relationships among service users ("**data**"), generally must be stored in Vietnam. However, data localization requirements differ depending on whether an organization is a domestic or a foreign enterprise. Domestic enterprises (which are enterprises established or registered in accordance with Vietnamese law and having their head-offices in Vietnam) have an obligation to store data within the territory of Vietnam. Foreign enterprises (which are enterprises established or registered in accordance with foreign laws), are only obligated to store data in Vietnam and to establish a branch or representative office in Vietnam if all of the following conditions are met: (1) the products/services provided by the relevant foreign enterprise fall within one of ten categories of "regulated services" (please see below for details); (2) there is a breach of cybersecurity regulations committed using the services provided; and (3) the enterprise receives a written notice from Vietnam's Department for Cybersecurity and Prevention of High-Tech Crime under the Ministry of Public Security notifying it of breach(es) under the Law on Cybersecurity and requiring rectification. If the foreign enterprise fails to comply with the requests set out in the notice, the Ministry of Public Security may issue a decision requiring data localization and establishment of a branch or a representative office within twelve (12) months from the date of the written notice. Decree 53 does not specify whether the data must be stored exclusively in Vietnam.

The ten categories of regulated services are: (1) telecoms services; (2) services of data storage and sharing in cyberspace (cloud storage); (3) supply of national or international domain names to service users in Vietnam; (4) e-commerce; (5) online payment services; (6) intermediary payment services; (7) service of transport connection via cyberspace; (8) social networking and social media; (9) online electronic games; and (10) services of providing, managing, or operating other information in cyberspace in the form of messages, phone calls, video calls, email, or online chat.

Autodesk does not provide any of these services, and thus is not subject to the data localization requirements for foreign enterprises.

#### **8. Does the PDP Decree Create Special Rules for Minors?**

Article 20 of the PDP Decree sets out the following special rules applicable to processing of children's personal data:

- a) processing children's personal data must always protect children's rights and best interests;
- b) consent of children of 7 years of age or older accompanied by their guardian's consent is required; and
- c) all parties are obligated to verify the age of the children before processing children's personal data.

You can find our updated Children's Privacy Statement [here](#).

#### **9. How Will Autodesk Demonstrate Compliance with the PDP Decree?**

We are committed to practicing transparency in how we handle personal data. We conduct internal assessments to maintain our obligations under the PDP Decree. Further, we maintain ISO certifications for the operational environment of certain cloud products and have undergone SOC 2 compliance audits for select cloud products. For additional information, please visit our [Trust Center](#). You can find our updated Privacy Statement [here](#) and contact our Data Protection Officer by emailing [DPO@Autodesk.com](mailto:DPO@Autodesk.com).