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VIETNAM'S DRAFT DTI LAW: REGULATING EMERGING TECHNOLOGIES TO FOSTER INNOVATION AND ENSURE COMPLIANCE

OVERVIEW

Vietnam is moving forward with plans to regulate a wide range of cutting-edge technologies with the upcoming Law on Digital Technology Industry. This law will cover artificial intelligence, big data, cloud computing, the Internet of Things, blockchain, and virtual/augmented reality. The law aims to establish a solid legal framework that encourages innovation and technological progress by providing support and incentives for businesses. Vietnam aims to position itself as a global hub for digital technology. Still, the law will also involve state management of emerging technologies not yet specifically regulated under Vietnamese law.

The Draft DTI Law aims to promote and incentivize the development of the digital technology industry in Vietnam, focusing on encouraging innovation rather than strict state management. The Government of Vietnam approved the law on 27 August 2024, and it is currently being finalized for submission to the National Assembly by mid-September 2024. It is scheduled to be discussed by the National Assembly in October of the same year, with the plan for adoption in the second quarter of 2025.

This newsletter explores the significant regulations outlined in the Draft DTI Law and how they could potentially affect technology companies operating in Vietnam.



DEFINES AND REGULATES AI SYSTEMS

The Draft DTI Law defines an "AI system" as a digital technology product that emulates human intelligence. These systems use data and information to conduct automatic analysis, reasoning, content generation, forecasting, recommendations, and decisions based on goals set by humans. The development, provision, and use of AI systems are subject to various requirements, including ensuring people-centeredness, enhancing productivity and work efficiency, serving and safeguarding human rights and interests, and not replacing humans or surpassing human control.

The Draft DTI law categorizes AI systems into high-risk and non-high-risk levels. A high-risk AI system poses potential risks to the health, safety, legitimate rights, and interests of organizations and individuals has a significant impact capability and a large user base and requires a substantial amount of computation for training. On the other hand, a non-high-risk AI system serves specific purposes, such as performing tasks within a narrow scope, enhancing human-performed tasks, or identifying and suggesting variances from previous outcomes.

The Draft DTI Law includes several requirements for developers and providers of AI systems. These obligations cover a range of areas such as ensuring equality, fairness, and non-discrimination against users, protecting privacy and personal information, establishing technical supervision and audit mechanisms, maintaining logs of AI system development and management, and conducting safety risk assessments before providing the AI system. These obligations may present compliance challenges without clear guidance.

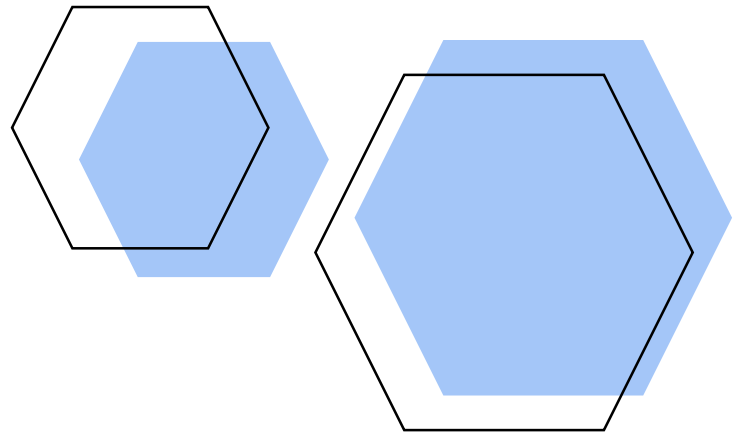
The Draft DTI Law includes provisions that mandate labeling all digital technology products created by AI systems for identification purposes. However, based on our assessment, these AI regulations in the Draft DTI Law are currently in an early stage and lack specificity, necessitating further refinement to ensure effective enforcement. For example, classifying AI systems, particularly the criteria for identifying high-risk AI systems, lacks precision and quantitative measures, potentially leading to broad categorizing AI systems as high-risk without more detailed guidance. Additionally, the distinction in treatment between the two categorized groups of AI systems is not clearly defined, making the classification seem unnecessary. Furthermore, certain obligations imposed on AI system developers present practical challenges in compliance, such as obligations that developers may be unable to fulfill due to their lack of control over users or their data. Finally, while the requirement for labeling applies to digital technology products created by AI systems, it is unclear whether this regulation is technically feasible for all current and future types of digital technology products, considering the broad scope of products governed by the Draft DTI Law.



INTRODUCES A "SANDBOX MECHANISM"

The Draft DTI Law includes a "Sandbox Mechanism" for the controlled testing products and services involving digital technology convergence. Under this mechanism, the competent authority will allow businesses to pilot these products and services within specific limitations of space, time, scale, and testing objects. The Sandbox Mechanism will be granted to companies for particular periods, initially set at 3 years but intended to be reduced to 2 years in the next draft version. This applies to products and services involving technological convergence that are either unregulated or regulated differently under current regulations. The Draft DTI Law outlines the criteria for applying for the Sandbox Mechanism, the application, implementation, extension, and finishing procedures, along with the rights and obligations of the participating enterprises, legal immunities, and other relevant details.

The introduction of the Sandbox Mechanism in Vietnam indicates that the authorities are mindful of emerging products and services resulting from technological convergence. However, it also signals that the authorities are not actively looking to stifle tech and digital innovation but rather to support it through this mechanism. As a result, it is advisable for tech businesses to closely follow the development of tech regulations in Vietnam and appropriately use the Sandbox Mechanism when creating new products and services that leverage advanced digital technologies.





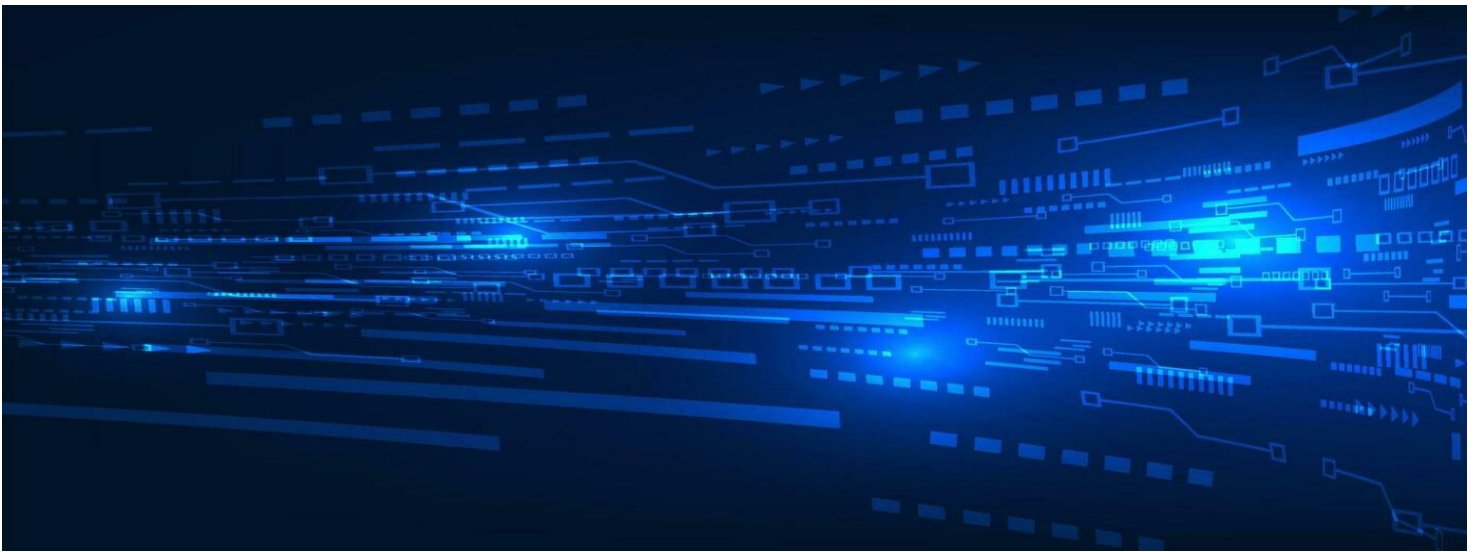
REQUIREMENTS OF DIGITAL DATA FOR TECH BUSINESSES

Businesses in the digital technology industry must ensure that their input digital data complies with mandatory technical regulations to be issued by the MIC, as per the Draft DTI Law. This will involve conducting self-assessments and making conformity declarations. The MIC may introduce several national technical requirements if these regulations are adopted. Therefore, businesses offering digital technology products and services should carefully review these requirements and be ready to act quickly to ensure compliance.

Providers of digital technology products and services are responsible for equipping customers with the necessary tools and technical solutions to transfer their digital data to digital products and services offered by other providers. The Draft DTI Law has a broad scope, encompassing all entities involved in the digital technology industry. This means that all tech businesses offering cross-border digital technology products and services to users in Vietnam will be required to comply with this regulation.

The regulation appears to pose challenges due to its broad definition of digital technology products and services, encompassing many offerings. This could make it burdensome, costly, and often unfeasible for providers to furnish tools and technical solutions to transfer their customers' digital data to other providers. Consequently, tech businesses, including offshore entities, may face unreasonable costs in meeting compliance requirements, such as investing in tools, technical systems, and human resources to enable the necessary data transfers mandated by the Draft DTI Law, despite the rapid evolution and introduction of new digital technologies.

In addition, the Draft DTI Law outlines that the MIC will create and maintain a digital technology industry database. This database will encompass a wide range of information about digital technology enterprises, including general details, human resources, digital technology products and services, financial statements, and other relevant information. Digital technology enterprises must provide and update information for inclusion in this database, either periodically or upon request from the competent authority. This obligation extends to tech businesses offering cross-border digital technology products and services to users in Vietnam, akin to customer digital data portability responsibilities. The current presentation of this information in the Draft DTI Law lacks clear limitations or exceptions, raising concerns about the potential disclosure of sensitive business information or trade secrets. Such disclosure could significantly impact the competitiveness and operations of tech businesses.



CONCLUSION

The Draft DTI Law is a significant step in Vietnam's digital transformation efforts. However, it currently lacks comprehensive regulations and appears to be in an early stage of development. Tech businesses must stay updated and ready for potential changes resulting from this legislation, given its importance and potential impact on the technology industry in Vietnam.

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