

Draft Amendments to Decree No. 181/2013/ND-CP: The Impact on Cross-border Advertising Activities

I. Background

On 19 August 2020, the Ministry of Information and Communications (the “MIC”) released the first version of the draft decree amending Decree No. 181/2013/ND-CP (“**Decree No. 181**”) dated 14 November 2013 of the Government guiding the implementation of the Law on Advertising (“**Draft Decree**”). This Draft Decree targets cross-border advertising activities on the internet such as websites, social networks and applications having users in Vietnam.

According to the MIC, the Draft Decree is intended to address the implementation issues under Decree No. 181, namely: inefficient provisions on cross-border advertising, the overlapping authorities to oversee the implementation of Decree No. 181, and the lack of stringent provisions on taxes, content and other obligations of the offshore advertising service providers and offshore platform owners (“**Offshore Entities**”) and onshore advertising service providers under Vietnamese laws.

As set out under the MIC’s proposal, the Draft Decree seeks to better clarify such overlap and address the said obligations to ensure Offshore Entities’ compliance with Vietnamese laws and regulations on advertising.

II. Key Changes Under The Draft Decree

1. **Both Offshore Entities and onshore advertising service providers are required to pay taxes for providing cross-border advertising services on websites and applications having users in Vietnam**

In its Explanation Letter to the Government, the MIC noted that the Offshore Entities’ provision of cross-border advertising services makes up more than 70% of the revenue of the online advertising market in Vietnam. That said, there is currently no effective provision to require such Offshore Entities, which own applications and websites, to pay taxes for the revenue generated from their advertising revenues

in Vietnam. Therefore, the MIC’s aim is to make the Draft Decree into such an instrument.

In particular, Article 1.2 of the Draft Decree provides that:

*“Offshore entities and/or individuals that provide cross-border advertising services in the cyber space **and** generate revenues in Vietnam from the websites, social media platforms/applications accessed by Vietnamese users are required to [...] pay taxes in accordance with the laws on taxes.”*

In practice, unlike corporate entities, the Vietnamese legal framework still lacks a mechanism to which Vietnamese individuals can pay the foreign contractors withholding tax to the government on behalf of the Offshore Entities.

Although the Law on Tax Administration provides some provisions to this, there have been no specific regulations for its implementation in any decree or circular.

2. Offshore Entities are required to comply with the Cybersecurity Law and reporting requirements

According to the MIC, there have been a plenty of violations of the advertising regulations whereby the names and/or trademarks of certain well-known brands are attached to the videos, the contents, of which, are in contravention with Vietnamese laws (i.e., threatening national security, promoting violence, etc.).

In such light, the MIC has imposed new obligations on the Offshore Entities to ensure that they review the contents of the advertisement as well as the advertising placement so that they comply with Article 8 of the Law on Advertising and Article 8.1 of the Cybersecurity Law. In addition, the Draft Decree also sets out regulations requiring Offshore Entities to provide the MIC with ad-hoc reports and an annual report on their business operations in Vietnam.

Furthermore, the MIC also requires Offshore Entities to remove and/or take down the infringing content upon the MIC's requests. In order to implement this requirement, the Draft Decree also requires Offshore Entities to provide the MIC with their contact information in Vietnam. Such information includes: name of the Offshore Entity, address of the Offshore Entity, location of the Offshore Entity's data center in Vietnam, and the contact point in Vietnam, etc. Consequently, the Offshore Entities may need to set up their representative offices or appoint a contact point serving as an authorized representative in Vietnam to liaise with the MIC for this purpose.

3. New requirements imposed on onshore advertising service providers and publishers

Under the Draft Decree, onshore advertising service providers must review the advertisement contents in order to comply with the Law on Advertising and ensure that the placement of advertisement content on the websites and the applications of the Offshore Entities meet the requirements set out under the Law on Advertising. In addition, onshore

advertising service providers must comply with other obligations of the Cybersecurity Law.

Under the Draft Decree, the publishers must detect and remove advertisement contents that violate the Law on Advertising. The publishers are not allowed to distribute unlawful advertisements of Offshore Entities as notified in writing by the competent authorities.

4. Abolishing the inefficient provisions under Decree No. 181

Under Decree No. 181, if Offshore Entities want to advertise services and goods in Vietnam, they must run through local advertising agents. Furthermore, such Offshore Entities are required to notify the Ministry of Culture, Sports and Tourism ("MCST") at least 15 days before conducting such advertisement. In practice, these requirements have caused trouble for Offshore Entities.

However, under the Draft Decree, the requirements mentioned above are removed. It means that, under the Draft Decree, corporate entities and individuals in Vietnam are allowed to directly advertise goods and services on offshore platforms.

The MIC is receiving feedback to the Draft Decree until 19 October 2020. Please do not hesitate to contact us if you need any assistance in communicating with the MIC towards that end.

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