



## Doing E-commerce Business in Vietnam

### - From the Perspective of Personal Data and Consumer Protection Legislation -

#### 1. Introduction

The Vietnamese e-commerce (EC) market has been booming in recent years. According to a report in 2024 from the Vietnam E-commerce Association (VECOM), the EC sector in Vietnam continues to thrive, with a growth rate exceeding 25% in 2023 compared to 2022 and now stands at over 25 billion USD<sup>1</sup>. This represents opportunities for Japanese companies, but when they establish and develop an EC business in Vietnam or launch cross-border EC platform to promote their sale into Vietnam, it is necessary to carefully consider the complex and frequently revised Vietnamese regulations. This article focuses on the recently revised personal data and consumer protection legislation that Japanese companies need to deal with when entering the EC business for selling into Vietnam and explains the main points of these laws and regulations.

#### 2. Common types of EC Business

Some common ways for Japanese companies to develop their EC business in Vietnam or launch a cross-border EC business for selling goods/services into Vietnam<sup>2</sup>.

- Establish their own local base in Vietnam and develop their EC sites (for sale of their own goods/services) or EC malls (for sale by other sellers) through this.
- Launch their own local Japan EC site or EC mall in Japan
- Open a store in an EC mall that is already operating in Vietnam
- Open a store in an existing local EC mall in Japan

Regardless of which type of EC business is selected, companies operating these EC businesses must comply with the personal data and consumer protection regulations, as briefly discussed below.

#### 3. Personal Data and Consumer Protection Legislation

##### (1) Personal Data Protection Decree

###### a. Overview

On July 1, 2023, the Decree on Personal Data Protection (Decree No. 13/2023/ND-CP, hereinafter "Decree 13") came into effect in response to growing concerns about the leakage and abusive use of personal data due to the rapid growth of EC in Vietnam.

In addition, on May 2, 2024, a draft decree on administrative penalties for violations in the field of cybersecurity was published. The draft decree includes penalties for violations of personal data security under Decree 13, including a maximum fine of 10% of the total turnover of the previous fiscal year in Vietnam for corporations. The draft decree was scheduled to take effect on June 1, 2024, but as of this writing, the decree is not in effect.

<sup>1</sup> <http://en.vecom.vn/vietnam-e-commerce-business-index-report-ebi-2024>

<sup>2</sup> <https://www.jetro.go.jp/world/qa/C-170201.html>

## **b. Application**

Decree 13 applies not only to local Vietnamese companies, but also to "Vietnam-based foreign agencies, organizations and individuals" and "Foreign agencies, organizations and individuals directly engaged or involved in personal data processing activities in Vietnam" (Article 1, Paragraph 2 of Decree 13). Therefore, even if a Japanese company develops its cross-border EC business in a way that it does not have a base in Vietnam, it is subject to the application of Decree 13 if it acquires personal data in Vietnam.

## **c. Creation of privacy policy**

When acquiring customers' personal data, a notification of personal data processing must be made before the personal data processing activities are carried out, and its contents must include matters such as the purpose of processing and the type of personal data (Article 13 of Decree 13). Personal data controllers must obtain consent from customers who clearly understand these matters (Article 11, Paragraph 2 of Decree 13). In order to fulfill these provisions, Japanese companies operating an EC business must prepare and publish a privacy policy for Vietnamese customers.

## **d. Submission of various evaluation documents**

Personal data controllers and/or processors must prepare and submit personal data processing impact assessment documents to the Department of Cyber Security and Hi-Tech Crime Prevention and Control under the Ministry of Public Security (commonly known as "A05") within 60 days from the date the personal data of the customer is acquired (Article 24 of Decree 13). In addition, personal data controllers/processors and other authorized entities who transfer personal data of Vietnamese citizens outside of Vietnam must prepare and submit a dossier of the assessment of the impacts of the transfer of personal data abroad to A05 within 60 days from the date of commencement of data processing (Article 25 of Decree 13). Assessment documents must be updated and supplemented within 10 days of any changes to the initial documents.

## **e. Vietnam Draft Personal Data Protection Law**

On September 24, the Vietnamese government opened the public comment period for the draft Personal Data Protection Law which is scheduled to be enacted in October 2025 to take effect from January 2026. Some significant changes are:

- Data Protection Trustworthiness Rating (by qualified entities) is a new requirement for the assessment of the impact of personal data processing and the assessment of the impact on cross-border personal data transfers. These assessments must be updated every 6 months and upon the occurrence of certain changes.
- Appointment of authorized personal data protection (PDP) entities and experts is a must for entities that handle basic personal data and sensitive personal data. SMEs and start-ups are granted a two-year transition period before being required to comply with this requirement.
- A set of conditions and requirements established for being licensed to practice as (i) PDP entities, (ii) PDP experts, (iii) Data Protection Credit Rating agencies (i.e. the entities assess the trustworthiness of entities engaging personal data protection as services) and (iv) data processing.
- Strict PDP obligations when processing personal data in particular business sectors (e.g., behavioral targeted advertising, other targeted advertising, big data processing, artificial intelligence, cloud computing, banking and finance, social networks, and OTT streaming) or when dealing with particular information (e.g., health and insurance data, location data, biometric data, credit data, children's data, and employee's data).

## **(2) Consumer Rights Protection Act of 2023**

### **a. Overview**

On July 1, 2024, the Law on Protection of Consumer Rights 2023 (No.19/2023/QH15; hereinafter referred to as the "New Law") and its implementing decree (No.55/2024/ND-CP; hereinafter referred to as "Decree

55") came into effect, amending the previous law (No.51/2010/QH12, hereinafter, "Old Law") in order to respond to the recent surge in EC and changes in marketing methods.

## **b. Application**

Since the New Law includes "domestic and foreign agencies, organizations and individuals related to the protection of consumer rights" (Article 2, Paragraph 5 of the New Law), by its wording, the New Law may also be applied to the offshore entities operating cross-border EC businesses for selling into Vietnam.

## **c. Obligations imposed on cross-border EC businesses**

### (a) Provide detailed information

The New Law establishes a new concept of "distance transactions"<sup>3</sup> as a type of special transaction (Articles 37-40 of the New Law). For example, when a business conducts a distance transaction, the business must provide consumers with detailed information about its business and products (Article 37, Paragraph 1 of the New Law and Article 22 of Decree 55). Therefore, it is necessary to ensure compliance with these regulations before preparing the description of the products to be listed on an EC mall.

### (b) No-fault liability for defective products

Business organizations and individuals must provide compensation for damages when their defective products or goods cause harm to the life, health, or property of consumers even when they are not aware of, or not at fault for, such defects (Article 34 of the New Law). However, in the following cases, business entities are exempted from liability for such damages (Article 35 of the New Law).

- They can prove that the defects of the products and goods are undetectable given the world's scientific and technological level at the time such products and goods caused damage to consumers;
- Business organizations and individuals have fully applied remedial measures including, but not limited to, recalling defective products, reporting to state authorities, carrying out measures to protect consumers during recall periods (Articles 32 and 33 of this Law), and consumers have received sufficient information on defective products and goods but still intentionally use them thereby causing damage; and
- Other cases specified by the civil law and other relevant regulations.

### (c) Protection of rights of vulnerable consumers

The New Law adds provisions for the "protection of rights of vulnerable consumers".

The term "vulnerable consumers" means the elderly, the disabled, children, ethnic minorities, women who are pregnant or raising children under 36 months old, people suffering from fatal diseases, and members of needy households (Article 8, Paragraph 1 of the New Law).

If a vulnerable consumer files a request for protection, enclosing evidence and documents proving that he/she is a vulnerable consumer and his/her rights are infringed upon, the concerned business organization or individual shall prioritize the receipt and processing of such request (Article 8, Paragraph 2 of the New Law). The business must compensate the vulnerable consumer for any delay in this receipt and processing, etc.

### (d) Protection of consumer information

"Consumer information" was not clearly defined in the Old Law but is now defined in the New Law as "consumer information includes personal information of consumers, information about the purchase and use of products, goods and services by consumers and other information related to transactions between consumers and business organizations and individuals." (Article 3, Paragraph 3 of the New Law).

When a business acquires consumer information, it must comply with the provisions for protecting consumer information (Articles 15-20 of the New Law), including creating consumer information

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<sup>3</sup> A "distance transaction" is defined as "a transaction conducted in the cyberspace, via electronic media or by other means in which consumers may neither check nor come into direct contact with products, goods or services before entering into the transaction" (Article 3, Paragraph 5 of the New Law).

protection rules, giving advance notice to and getting consent from customers before collecting, using and archiving consumers information, ensuring data protection and privacy, ensuring consumers' rights to check, modify, update, cancel, and transfer data and suspend data transfers. These include many regulations that are identical to those in Decree 13, but some provisions differ in detail and so should be checked.

#### **d. Obligations specific to providers/operators of EC digital platforms**

The New Law prohibits the following activities by providers/operators of EC digital platforms (e.g., websites, mobile apps and social media), (1) preventing consumers from registering or using other digital platforms, (2) undermining consumers' freedom to choose by adjusting the preferential display of products without disclosing the selection criteria, (3) blocking or faking consumer reviews, (4) hindering the operation of Consumer Organizations, (5) preventing consumers from uninstalling or installing irrelevant software or applications, and (6) other infringements of consumer rights (Article 10, Paragraph 3, of the New Law). In addition, digital platform providers/operators must comply with certain responsibilities, such as the publication of contact information (Article 39, Paragraph 3, Item (a) of the New Law) and the creation and publication of activity rules (Article 39, Paragraph 3, Item (b) of the New Law).

### **4. Other noteworthy regulations**

#### **(1) Obligations specific to foreign entities owning and operating EC malls in Vietnam**

Some other notable obligations imposed on foreign companies owning and operating EC malls in Vietnam include (Article 67a of Decree No. 52/2013/ND-CP as amended by Decree No.08/2018/ND-CP and Decree No.85/2021/ND-CP):

- To register the establishment of an EC website;
- to establish a representative office in Vietnam or appoint an authorized agent in Vietnam;
- to cooperate with Vietnamese authorities to prevent illegal transactions;
- to fulfill obligations to protect consumers;
- to ensure quality of goods and services as prescribed by Vietnamese law; and
- to report the status of operations to the Ministry of Industry and Trade

#### **(2) Obligations specific to foreign entities providing continuous services into Vietnam<sup>4</sup>**

Foreign companies that provide continuous services into Vietnam are obliged under Article 41 of the New Law to:

- appoint and announce their local legal representatives or their authorized representatives in Vietnam;
- not to request advance payment unless otherwise agreed by the parties;
- not to unilaterally terminate contracts and services contrary to regulations or law.
- provide users at least three days' written notice of a temporary suspension of services due to maintenance or repairs or other causes, except in cases of force majeure.

### **5. Conclusion**

As mentioned above, in conducting an EC business in Vietnam, Japanese entities have to create privacy policies, prepare various evaluation documents, and submit them to the authorities under the Personal Data Protection Decree, while under the Consumer Rights Protection Act, Japanese entities have to enhance product and other information and comply with responsibilities imposed on business operators. To comply with such diverse regulations, it is important to take sufficient measures with the knowledge and assistance of experts.

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<sup>4</sup> *Provision of continuous services* means provision of services for a minimum term of 3 months or for in-definite term, see Article 3, paragraph 6, of the New Law.

## ■ Notice of Atsumi & Sakai Ho Chi Minh City Office Relocation

We are pleased to announce that on November 1, 2024, our [Ho Chi Minh City Office](#) was relocated to the address below.

[New Address]

10F, The NEXUS building, 3A-3B Ton Duc Thang Street,  
Ben Nghe Ward, District 1, Ho Chi Minh City, Vietnam  
Tel: +84-(0)28-3520-8145 (Ext. 217)

## Authors

### [Katsunori Irie](#)

Partner

E: [katsunori.irie@aplav.jp](mailto:katsunori.irie@aplav.jp)

### [Taisuke Oikawa](#)

Associate

E: [taisuke.oikawa@aplav.jp](mailto:taisuke.oikawa@aplav.jp)

### [Thi Ngoc Anh Mai\\*](#)

Of Counsel

\*Not Registered as a Foreign Lawyer in Japan

E: [anh.mai@aplav.jp](mailto:anh.mai@aplav.jp)

## Contacts

E-mail: [ipg\\_vietnam@aplav.jp](mailto:ipg_vietnam@aplav.jp)

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[www.aplavjapan.com/en/](http://www.aplavjapan.com/en/)

**Tokyo Office:** Fukoku Seimei Bldg., 2-2-2 Uchisaiwaicho, Chiyoda-ku, Tokyo 100-0011, Japan

**Fukuoka Affiliate Office:** Tenjin Bldg. 10F, 2-12-1 Tenjin, Chuo-ku, Fukuoka-shi, Fukuoka 810-0001 Japan

**New York Affiliate Office:** 1120 Avenue of the Americas, 4th Floor, New York, New York 10036

**London Office:** 85 Gresham Street, London EC2V 7NQ, United Kingdom

**Frankfurt Affiliate Office:** OpfernTurm (13F) Bockenheimer Landstraße 2-4, 60306 Frankfurt am Main, Germany

**Brussels Office:** CBR Building, Chaussée de la Hulpe 185, 1170, Brussels, Belgium

**Ho Chi Minh City Office:** 10F, The NEXUS building, 3A-3B Ton Duc Thang Street, Ben Nghe Ward, District 1, Ho Chi Minh City, Vietnam

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