



SPECIAL EDITION: DECREE NO.13/2023/ND-CP

LAW BULLETIN

ATS LAW FIRM

Ha Noi City Office
10th Floor, Dao Duy Anh Tower
9 Dao Duy Anh Street, Dong Da District, Ha Noi City
Email: partners@atslegal.vn – Tel: +84-24-3751 1888

Ho Chi Minh City Office
12th Floor, 40 Pham Ngoc Thach
Vo Thi Sau Ward, District 3, Ho Chi Minh City
Website: www.atslegal.vn - Tel: 84-28-3926 2635





VU THI THU HA

MANAGING PARTNER – ATS LAW FIRM



— WELCOME —

WORDS FROM MANAGING PARTNER

We are committed to providing an effective, reliable and responsive service to each of our clients.

Our approach is client-focused, solution-oriented and innovative. We have a dedicated and experienced team providing a comprehensive range of services to meet the needs of our clients.

We strive to do whatever it takes in order to resolve the legal issues that face clients, allowing them to minimize administrative overheads and focus on their core business activities.

ASSOCIATION – TRUST – SUCCESS

At ATS Law Firm, our deeds reflect our creed – to provide the very best professional legal services, and to gain and maintain our clients' trust and satisfaction

To become a top-level legal services provider on domestic and international matters, we have formed associations with many local, national and international organizations to exchange knowledge, experience and skills.

We pride ourselves on our ability to build client trust and support them in navigating applicable laws. We have a very high rate of success in accomplishing our clients' objectives, consistently exceeding expectations.

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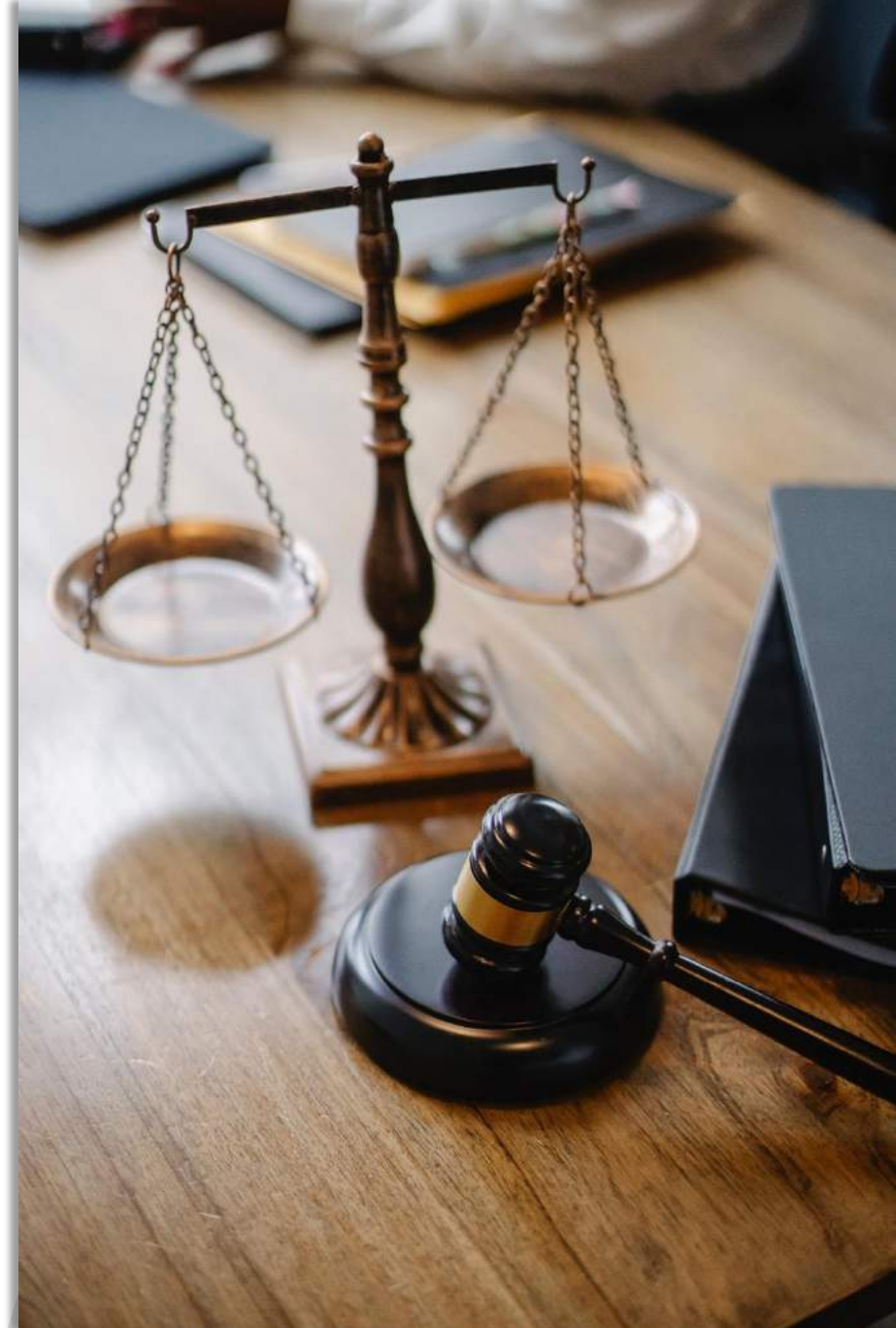
DECREE NO. 13/2023/ND-CP


1. Key components of Decree No. 13/2023/ND-CP

2. Impact on enterprises

- i. Inspection plan for compliance with personal data protection regulations No. 151/KH-BCA-A05 dated March 22, 2024
- ii. Actions enterprises need to do
- iii. Sanctions for violations of the law on personal data protection

3. Recommendations





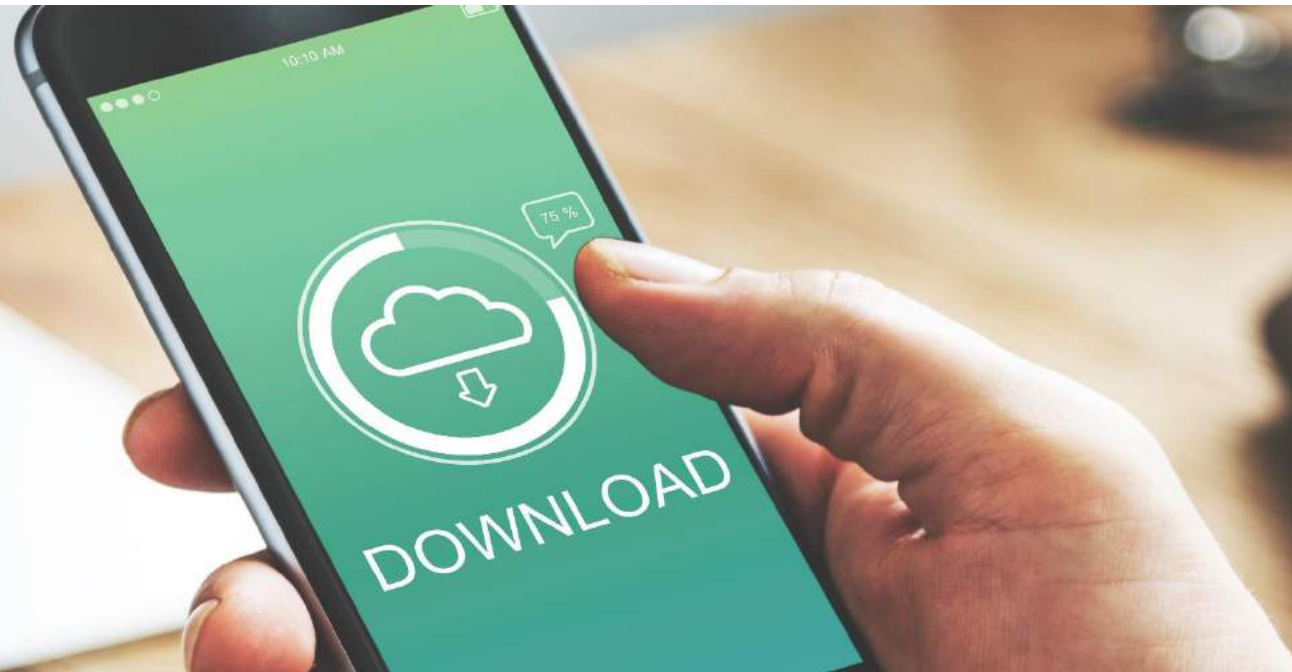
KEY REGULATIONS OF DECREE NO. 13/2023/ND-CP



Scope of application

- Vietnamese agencies, organizations and individuals;
- Foreign authorities, entities and individuals in Vietnam;
- Vietnamese agencies, organizations and individuals that operate in foreign countries;
- Foreign agencies, organizations and individuals that directly process or are involved in processing personal data in Vietnam.

➤ [Article 1 Decree No. 13/2023/ND-CP](#)



Data subjects' rights

- Right to be informed;
 - Right to give consent;
 - Right to access personal data;
 - Right to withdraw consent;
 - Right to delete personal data;
 - Right to obtain restriction on processing;
 - Right to obtain personal data;
 - Right to object to processing;
 - Right to file complaints, denunciations and lawsuits;
 - Right to claim damage;
 - Right to self-protection.
- ▶ [Article 9 Decree No. 13/2023/ND-CP](#)

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Consent of a data subject

The consent of the data subject shall be granted to all activities in the processing of his/her personal data, unless otherwise provided for by law.

The consent is only valid when the data subject voluntarily consents and clearly knows the following contents: Type of personal data; Purposes; Organization or individual permitted to process personal data; Rights and obligations of the data subject.

Additionally, the consent of the data subject shall be:

- expressed in a clear and specific manner in writing, by voice, by ticking the consent box, by consent syntax via message, by selecting consent settings ...;
- must be bound to the same purpose. In case of multiple purposes, the Personal

Data Controller and the Personal Data Controller-cum-Processor shall list these purposes so that the data subject consents to one or several purposes that have been set out;

- shall be expressed in a format that can be printed and reproduced in writing, including in electronic or verifiable format.

Silence or non-response is not considered as consent. In case of the processing of sensitive personal data, the data subject shall receive notification of thereof.

In case of a dispute, the Personal Data Controller and the Personal Data Controller-cum-Processor shall prove consent of the data subject.

➤ [Article 11 Decree No. 13/2023/ND-CP](#)





Personal data processing without the consent of data subject

1. The personal data shall be processed to protect the life and health of the data subject or others in an emergency situation. The Personal Data Controller, the Personal Data Controller-cum-Processor, the Personal Data Processor and the Third Party shall be responsible for proving such situation.
2. Disclosure of personal data in accordance with the law;
3. Processing of personal data by competent regulatory authorities in the event of a state of emergency regarding national defense, security, social order and safety, major disasters, or dangerous epidemics; when there is a threat to security and national defense but not to the extent of declaring a state of emergency; to prevent and fight riots and terrorism, crimes and law violations according to the provisions of law;
4. The personal data shall be processed to fulfill obligations under contracts the data subjects with relevant agencies, organizations and individuals as prescribed by law;
5. The personal data shall be processed to serve operations by regulatory authorities as prescribed by relevant laws.

► [Article 17 Decree No. 13/2023/ND-CP](#)

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Notification of personal data processing

The notification shall be made once before the personal data is processed.

(ii) The following contents of the processing of personal data shall be notified to the data subject: Processing purposes; Type of used personal data related to the purposes; Method of processing personal data; Information on other organizations and individuals related to

the processing purposes; Undesirable consequences and damage that may occur; Starting and ending time.

The notification to the data subject shall be expressed in a format that can be printed and reproduced in writing, including in electronic or verifiable format.

➤ [Article 13 Decree No. 13/2023/ND-CP](#)

Cross-border transfer of personal data

The Sender makes a dossier on assessment of impact of outbound transfer of personal data and carries out the procedures specified in Clauses 3, 4 and 5 of this Article.

A dossier on assessment of impact of outbound transfer of personal data shall be always available in order to serve inspection and assessment; 01 authentic copy of the assessment to the Department of

Cybersecurity and Hi-tech Crime Prevention – A05 within 60 days from the date of processing of personal data.

The Sender shall notify A05 of information about the data transfer and contact details of the organization or individual in charge of such transfer in writing after the personal data is successfully transferred.

➤ [Article 25 Decree No. 13/2023/ND-CP](#)



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Notification obligation in case of violating regulations on personal data protection

In case of detection of a violation against regulations on protection of personal data, the Personal Data Controller or the Personal Data Controller-cum-Processor shall notify the Ministry of Public Security (Department of Cybersecurity and Hi-tech Crime Prevention – A05) within 72 hours after such violation is committed. If the notification is given after 72 hours, the reason for the late notification shall be provided.

Organizations and individuals shall notify the Ministry of Public Security (Department of Cybersecurity and Hi-tech Crime Prevention) when detecting the following cases:

- Violations are detected;
- Personal data is processed for unintended purposes or against the original agreement

between the data subject and the Personal Data Controller, the Personal Data Controller-cum-Processor or in contravention of regulations of law;

- The data subject's rights are not protected or not properly exercised;
- Other cases as prescribed by law.
 - [Article 23 Decree No. 13/2023/ND-CP](#)





Assessment of impact of personal data processing

The Personal Data Controller and the Personal Data Controller-cum-Processor shall make and store their dossiers on assessment of impact of personal data processing from the time of starting to process personal data. Accordingly:

- A dossier made by Personal Data Controller and the Personal Data Controller-cum-Processor;
 - The Personal Data Processor shall make and store the dossier on the assessment of impact of personal data processing with the required content in case the Personal Data Processor acts as the Personal Data Controller;
 - The dossier shall be always available in order to serve inspection and assessment by the Ministry of Public Security and the Ministry of Public Security (Department of Cybersecurity and Hi-tech Crime
- Prevention – A05), including 01 authentic copy within 60 days from the date of processing of personal data;
- A05 evaluates and requests the Personal Data Controller, the Personal Data Controller and Processor, and the Personal Data Processor to complete the Personal Data Processing Impact Assessment Document in case the dossier is not complete and in accordance with regulations;
 - The Personal Data Controller, the Personal Data Controller and Processor, and the Personal Data Processor update and supplement the Personal Data Processing Impact Assessment Document sent to A05 when there is a change in content.

➤ [Article 24 Decree No. 13/2023/ND-CP](#)



WHAT SHOULD THE ENTERPRISES DO FOR COMPLIANCE?



Inspection plan for compliance with personal data protection regulations No. 151/KH-BCA-A05 dated March 22, 2024 (“Plan 151”)

According to Plan 151, the Inspection Team under the Department of Cyber Security and Hi-Tech Crime Prevention of the MPS requires specific agencies and organizations subject to inspection to submit a Compliance Assessment Report on Personal Data Protection before May 30, 2024. The Inspection Team will conduct inspections at these agencies and organizations in June, July, and August 2024.

IMPACT ON ENTERPRISES

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Actions enterprises need to do

Identify the types of personal data being processed.

If the enterprise processes sensitive personal data, it is required to designate a department and personnel responsible for personal data protection.

Micro-enterprises, small enterprises, medium-sized enterprises, and startups are allowed to choose exemption from regulations on appointment of the personnel and department for personal data protection.

Build procedures, review and adjust the document system

Develop or supplement into the Labor Regulations the provisions on the prohibition of buying, selling, and sharing personal data information as a basis for labor discipline and compensation in case of violation;

Formulate standard templates for the consent agreement that permits the provision and processing of personal data, for customers and partners to sign.

Collect consent and notify the data subject

Additionally, enterprises may have difficulties in designing forms, establishing appropriate consent collection methods, managing and recording evidence of collected information, and developing new procedures and forms about the withdrawal of the employee's consent.

Implement technical measures to protect personal data

Building technical systems and applications with the function of protecting data, preventing data theft and unauthorized intrusion from others.

Training the separate technical department with data protection function, the staff in charge and individual in charge of personal data protection with the competent agency.

Implement administrative procedures

Including personal data processing impact assessment, impact assessment of cross-border transfer of personal data (for enterprises with cross-border data transfer activities), and notification of violations of regulations on personal data protection.

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Sanctions for violations of the law on personal data protection

Criminal remedies

Article 159 stipulates that "*Infringe upon other person's privacy or safety of letters, telephone, telegraph or other people's means of private communications*" can be punished with up to 3 years. Article 288 regulates the "*Illegal uploading information onto or using information on computer networks and telecommunications networks*" with a maximum penalty of 7 years of imprisonment.

Civil remedies

The right to protect personal information is a civil right, the protection of this right is considered a principle in Civil law. Data subjects have the right to self-protect according to the provisions of the Civil Code, other relevant laws and Decree 13, or request competent agencies and organizations to implement methods of protecting civil rights according to Article 11 of the Civil Code (Article 9.11 Decree 13).

Administrative remedies

Violation of regulations on protection of personal data, depending on the severity, can be disciplined, administratively sanctioned and more serious can be prosecuted according to the provisions of the law (Article 4 Decree 13). Although the current law on handling administrative violations has penalties for some violations related to personal data protection, these regulations have not yet completely to be the sanction basis for violations not in the fields of postal services, telecommunications, information technology, radio frequencies, commerce, production, trading of counterfeit goods, banned goods, and protection of rights consumers.



RECOMMENDATIONS



Recommendations for improvements in policy frameworks, personnel and technology drawn from these assessments will help enterprises propose and implement remedial solutions by mobilizing internal resources.

In addition, enterprises should seek the assistance of relevant agencies and legal consultants to ensure compliance with the law and avoid potential risks.

LEGAL CONSULTANCY

ATS is willing to provide legal services related to personal data protection as follows:

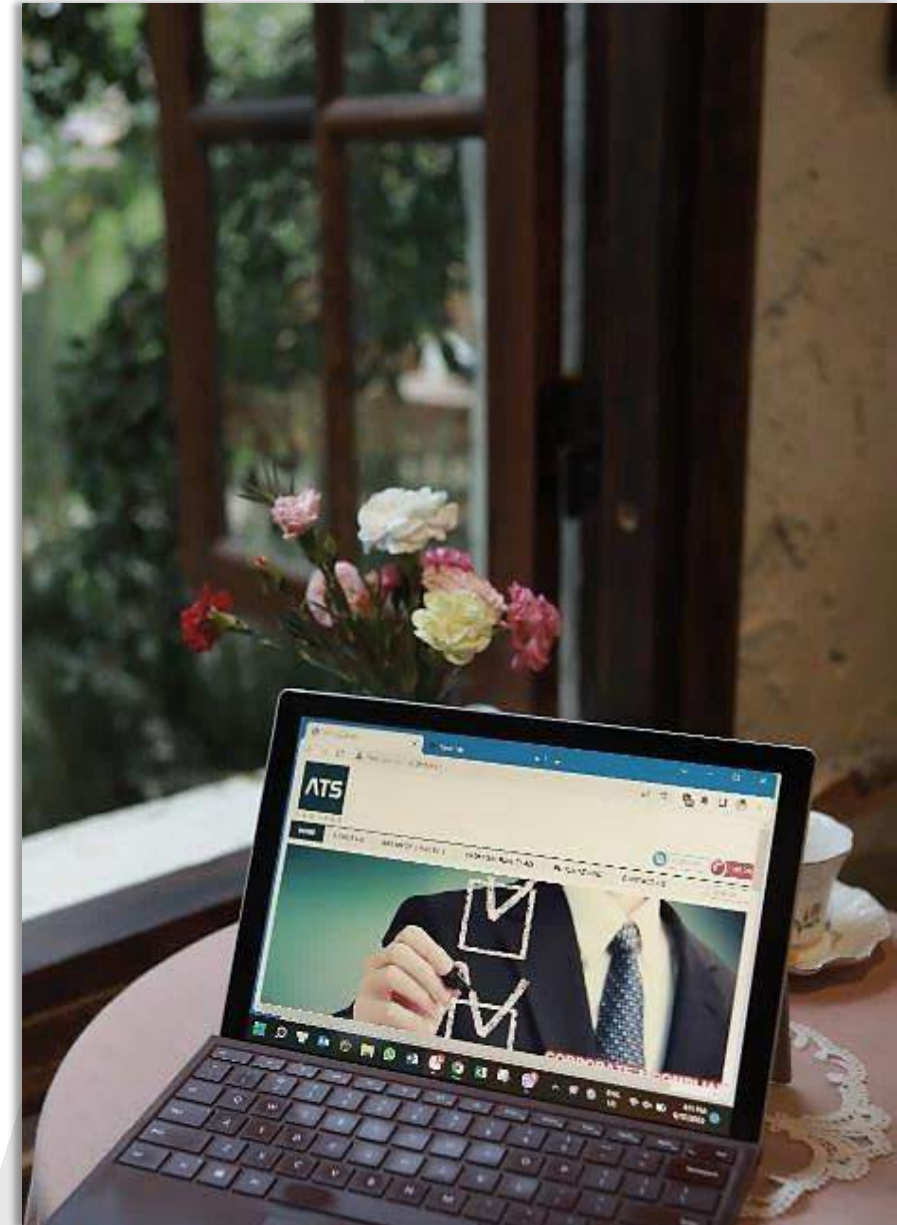
1. Drafting a set of internal documents relating to personal data protection, including:

- Privacy statement ;
- Cookie policy to be accepted by people accessing website;
- Letter of consent on personal data protection by the customers and company's employees;
- Cross-border data transfer agreement.

2. Preparing personal data processing impact assessment ;

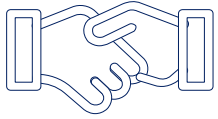
3. Preparing oversea personal data transfer impact assessment;

4. Carrying out administrative procedures at competent agencies..



OUR EXPERTISE

We are always at your service



Mergers & Acquisitions

We provide an end-to-end service to our clients, in cross-border as well as domestic M&A transactions, and are committed to providing pragmatic advice



Taxation

Our practice covers all types of taxes (commercial/sales, individual and VAT, among others) and we advise on matters ranging from compliance issues to the tax implications of particular transactions



Investment

We provide legal services to investors and foreign-invested enterprise. We always well understand the requirements of investors, financial institutions and stakeholders in large-scale investment projects in Vietnam.



Litigation

We always discuss thoroughly with customers and review the provided documents to propose optimal solutions which is best protect the rights and legitimate interests of customers in each specific case.



Banking & Project Finance

We have the expertise necessary to properly handle the risks in financial and banking activities and provide services such as: identifying potential risks, loan contracts, mortgage contracts, establish internal procedures of the banks



Labour

Our diverse service range from consulting employee recruitment, employee benefits, performance evaluation, contract signing and termination, personal income tax, and human resource management to, resolving labor dispute



Compliance

Corporate structure and business management play key roles in the operational effectiveness and success of an enterprise. Our lawyers always provide clients with a suite of effective solutions in the area of business restructuring and management.



Contracts & Agreements

We provide service on consulting and reviewing contracts and agreements, to support clients to negotiate with their partners, to protect their legal rights and interests to settle contractual dispute



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