



LEGAL UPDATE

NEW REGULATIONS ON CROSS-BORDER ADVERTISING SERVICES

Nowadays, more and more organisations and individuals in Vietnam using cross-border advertising services provided by various foreign providers such as Facebook, Google, Tik Tok. However, the management mechanism under the prevailing regulations of Vietnam on the provision of cross-border advertising services (**CAS**) was not sufficient to manage CAS activities, prevent or handle violations effectively. The rules on the provision of CAS have been receiving closer attention from the Government and relevant organisations and individuals involved in CAS provision.

On 20 July 2021, the Government promulgated Decree No. 70/2021/ND-CP (**Decree 70**), amending and supplementing several articles of Decree No. 181/2013/ND-CP implementing the Law on Advertising (**Decree 181**). Decree 70 will come into effect on 15 September 2021.

In general, Decree 70 amends and supplements the CAS provision regulations, which sets out more stringent obligations for CAS providers and are expected to prevent and handle violations in CAS provision activities more effectively. Decree 70 stipulates that entities engaging in CAS must comply with cybersecurity and IP regulations, regulations on management, provision, and use of internet services, and pay tax.

Some examples of CAS provision would be foreign entities providing advertising services via websites (from a system located outside Vietnam) that allow live chat, forum creation, exchange of information, sound, or image sharing.

In this update, we set out some notable points in the new Decree for your information.

1. Definitions

Decree 181 has not stipulated the definition of the *provision of CAS* but only provided for a simple one of *CAS provision website*.

Decree 70 now supplements the definition of the *provision of CAS* and redefines the *CAS provision website*. In particular:

- *The provision of CAS* means using a website (electronic information site) by foreign organisations and individuals to provide advertising services for users in Vietnam from a service-providing equipment system located outside Vietnam and generate revenue in Vietnam.
- *CAS provision website* means an information system that uses one or more websites in the form of symbols, numbers, letters, images, sounds and other forms of information to provide network users with services of information storage, provision, use, search and exchange, sharing of sounds and images, and creation of online chats and forums to provide advertising services.

2. Consolidation of Management Authority

Under the previous regulations, the Ministry of Information and Communications (**MIC**) managed online advertising while the Ministry of Culture, Sports and Tourism (**MCST**) managed organisations and individuals providing CAS. It resulted in inconsistent and ineffective implementation of the management policies on cross-border advertising.

Under Decree 70 MIC will be the competent supervising ministry. Accordingly, foreign organisations and individuals providing CAS in Vietnam need to submit a notification on contact information to MIC at least 15 days before providing CAS in Vietnam. MIC will grant confirmation within 7 business days from the receipt of such notification.

Furthermore, annual reports, on-request reports, and reports on violations relating to CAS provision activities shall also be submitted to MIC.

3. More Stringent Obligations for CAS Providers

Similar to Decree 181, Decree 70 also stipulates that CAS Providers must comply with Vietnamese laws on advertising, cybersecurity and management, provision and



use of Internet services and online information, and pay tax.

In addition, Decree 70 states the following obligations for CAS Providers:

- notification on contact information to MIC as mentioned in Section 2 above;
- not placing advertising products in any contents which breach the law as stipulated in Article 8.1 of the Law on Cybersecurity and Article 28 of the Law on Intellectual Property;
- preventing and removing information which breaches the law at the request of MIC and competent authorities;
- providing information on other organisations and individuals involved in CAS provision with signs of violation against Vietnamese law at the request of the competent authorities; and
- providing technical solutions for advertisement distributors and advertisers in Vietnam to control and remove advertisements violating Vietnamese law on service provision systems.

4. A More Effective Mechanism for Handling Violations

Aside from the measures mentioned in Section 3, Decree 70 stipulates that CAS Providers must handle unlawful advertisements within 24 hours upon receiving MIC's request or that MIC shall block such advertisements.

The competent Vietnamese authorities shall take measures to block cross-border advertisements threatening Vietnam's national security immediately.

5. Run Advertisements through Vietnam-based Advertising Agencies

Decree 181 stipulates that Vietnamese organisations and individuals shall advertise their goods and services on websites of foreign organisations and individuals providing CAS through advertising service providers licensed in Vietnam.

However, over time the Government has decided that it was not an effective or necessary method to ensure compliance with Vietnamese law in CAS provision activities. As a result, this requirement is no longer included in Decree 70. Instead, the new Decree provides a more effective management mechanism, as mentioned in the above sections.

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