

New Decree on handling administrative violations in TMT section

In brief

On 27 January 2022, the government issued Decree No. 14/2022/ND-CP to amend and supplement several provisions of Decree No. 15/2020/ND-CP on penalties for administrative violations in the fields of postal services, telecommunications, radio frequency, information technology and electronic transactions ("**Decree No. 15**"), and Decree No. 119/2020/ND-CP on penalties for administrative violations in journalistic and publishing activity ("**Decree No. 14**"). Decree No. 14 was issued with the aim of:

- Implementing the new provisions of the amended Law on Handling Administrative Violations¹
- Supplementing sanctions for the violating acts, including those regarding spam, illegal content, social network management, game licensing, etc.
- Revising and supplementing provisions regarding the authorities to fine administrative violations

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Key takeaways

- Significant changes to the general regulations of Decree No. 15 include (i) supplementing additional remedial measures; (ii) supplementing a scheme to determine the applicable statute of limitation in imposing administrative sanctions; and (iii) supplementing provisions to apply preventive measures for certain services, especially content services
- Key changes to sanctions regarding telecommunication services
- Notable changes to sanctions regarding violations of anti-spam
- Fine for non-compliance in collecting and processing personal data has doubled
- Notable sanctions regarding social network services
- The scope of Decree No. 119/2020/ND-CP on penalties for administrative violations in journalistic and publishing activity is amended to include printing services other than those listed as publishing activity

In depth

1. Significant changes to the general regulations of Decree No. 15

- (i) Supplementing additional remedial measures

¹ Law No. 67/2020/QH14, amending Law No. 15/2012/QH13 on Handling Administrative Violations ("**Law on Handling Administrative Violations**").



In addition to the existing remedial measures, Decree No. 14 provides additional legal bases to apply the following remedial measures under Article 28 of the Law on Handling Administrative Violations:²

- Forced restoration of the initial state
- Forced removal from the territory of the Socialist Republic of Vietnam or forced re-exportation of the violating goods, objects and means used to commit the violation
- Forced destruction of goods and objects causing harm to human health, domestic animals, cultivated plants and the environment, and forced destruction of harmful cultural products
- Forced recall of products and goods not satisfying quality requirements
- Forced submission of illegal gains from administrative violations or of an amount of money equivalent to the value of the material evidence and means used to commit administrative violations which have been sold, dispersed or destroyed contrary to the laws

Decree No. 14 also supplements the following specialized remedial measures:

- Forced submission of an amount of money equivalent to the total amount deposited into the main account of the subscriber identity module (SIM). In the case that it is not possible to determine the exact amount, the amount to be paid for each SIM is determined as follows: VND 100,000 (approximately USD 5) for each month of violation.
- Forced change made to the purpose of use or recycling
- Forced withdrawal of subscription numbers, telephone prefixes, telephone number storage, internet resources, domain name, Internet Protocol (IP) address, Autonomous System Number (ASN), service provider code and number, identification name and cyber information security products
- Forced revocation of postal items, IP address, ASN and domain name
- Forced submission of the use of frequency fee for the period during which such use was performed without a license or the service or transmission method being used was inappropriate; radio operator certificate
- Forced payment in full of the bid-winning price for the right to use internet resources
- Forced recovery of the expenses improperly spent
- Forced cancellation of bid results for the right to use radio frequencies, exam results regarding the right to use radio frequencies and bid results for the right to use internet resources
- Forced revocation of written permission for processing and repairing used information technology products
- Forced removal of false, misleading or illegal information, or links to false, misleading or illegal information
- Forced submission of the license, certificate of registration to provide online video game services, decision approving the G1 video game content and script to the issuing authority
- Forced submission of written confirmation of notice of postal activities
- Forced re-exportation of the imported cyber information security products
- Forced eradication of personal information
- Forced refund of the amount of charges improperly collected
- Proposal to the competent agency to revoke the license due to violating the law

² Decree No. 14, Article 1.4 amending Article 3.3 of Decree No. 15.



(ii) Supplementing a scheme to determine the applicable statute of limitation in imposing administrative sanctions³

When providing details on administrative violations and sanctions applicable to each of the violations, Decree No. 15 does not state the statute of limitation for imposing the sanctions once the violation has been proved. This issue is resolved by Decree No. 14. Specifically, the applicable statute of limitation for imposing administrative sanctions for violations stipulated in Decree No. 15 is up to two years. Whether the violating act has been completed or is ongoing will be determined according to Decree No. 118/2021/ND-CP dated 23 December 2021, guiding the Law on Handling Administrative Violations ("**Decree No. 118**").⁴

(iii) Supplementing provisions to apply preventive measures for certain services, especially content services on websites⁵

Following Decree No. 14, in addition to the sanctions and remedial measures, entities committing administrative violations under Decree No. 15 will also be subject to preventive measures under the Law on Handling Administrative Violations. Particularly, with respect to content services on websites, Decree No. 14 provides that if any websites with the ".vn." domain name show any of the following violations, their domain names will be withheld by the authority:

- Providing, circulating or using a map or image of Vietnam that does not fully represent or misrepresents the national sovereignty
- Providing or circulating fabricated information causing confusion among the people, not in accordance with the interests of the country, affecting the great national unity bloc, destroying historical traditions, denying revolution achievements, offending the nation or national hero, promoting profanity, superstition or obscenity, offending the prevalent customs and traditions of the nation, violating the right to freedom of belief or religion, and propagandizing and inciting terrorism, violence, crimes or social evils
- Providing or circulating untrue information and distorting, slandering or insulting the reputation of the organization, honor and dignity of an individual
- Providing or circulating journalistic, literary, artistic or publication works without the intellectual property right holder's consent, without permission for circulation, or when the work has been banned from circulation or confiscated by the competent authority
- Providing or circulating links to online information with content that violates the law
- Advertising, propagandizing or trading prohibited goods and services

2. Key changes to sanctions regarding telecommunication services

Under Decree No. 14, deliberately altering or erasing any content on the Telecommunication License will result in confiscation of telecommunication licenses as a remedial measure instead of as a supplemental penalty as stipulated under Decree No. 15.⁶ This still allows the authority to revoke the violating telecommunication licenses in the event that the statute of limitation has expired.⁷

Additionally, violations relating to cables in telecommunication services will be subject to a fine of VND 30 million to VND 50 million (approximately USD 1,315 to USD 2,190), while violations relating to telecommunication infrastructure will result in a fine of VND 50 million to VND 70 million (approximately USD 2,190 to USD 3,070).

³ Decree No. 14, Article 1.5 amending Article 4.5 of Decree No. 15.

⁴ Decree No. 118, Article 8.1.

⁵ Decree No. 14, Article 1.6 supplementing Article 4a to Decree No. 15.

⁶ Decree No. 14, Articles 1.12 and 3.1 amending Articles 15.7 and 15.6 of Decree No. 15, respectively.

⁷ Law on Handling Administrative Violations, Article 28.2.



3. Notable changes to sanctions regarding violations of anti-spam

From 27 January 2022, mobile service providers will be subject to a fine of up to VND 170 million (approximately USD 7,470) for committing, among others, the following acts:⁸

- Collecting service charges for error messages, messages without providing services, messages provided with services but containing content different from the code announced by the enterprise or messages sent by the user due to a scam
- Failing to take measures to prevent advertising messages or calls to the non-advertising list
- Failing to prevent or recall electronic addresses used to distribute spam messages, spam emails and spam calls at the request of a competent state agency
- Failing to build and operate a technical system to prevent spam messages, spam emails and spam calls
- Failing to build or connect their technical systems managing identifiers to the National Identifier System (tendinhdanh.ais.gov.vn)
- Failing to cooperate to prevent and handle spam emails and calls, and take other professional measures at the Ministry of Information and Communications' request (Authority of Information Security).

4. Fines for non-compliance in collecting and processing personal data has doubled

Decree No. 14 doubles the fine applicable to non-compliance in collecting and processing data. In particular, the following acts will be subject to a fine of up to VND 60 million (approximately USD 2,640):⁹

- Using personal information for purposes inconsistent with those agreed upon when collecting the information or without the consent of the information subject
- Providing, sharing or spreading the collected, accessed and controlled personal information to third parties without the information owner's consent
- Illegally collecting, using, spreading or trading others' personal information

5. Notable sanctions regarding social network services

Among others, the following acts are now considered violations under Decree No. 15 (amended by Decree No. 14) and will be subject to a fine of up to VND 50 million (approximately USD 2,190):

- Using an expired social network establishment license¹⁰
- Failing to fully perform the registration, storage and management of personal information of the person setting up the personal website and other information providers on the social network as required¹¹
- Failing to duly perform the periodical report, failing to make unexpected reports or providing untruthful reports¹²
- Providing services not in compliance with the provisions of the social network establishment license¹³
- Actively providing links to websites or applications including unlawful content¹⁴

⁸ Decree No. 14, Article 1.33 amending Article 95.4 of Decree No. 15

⁹ Decree No. 14, Article 1.30 amending Article 84.2 of Decree No. 15

¹⁰ Decree No. 14, Article 1.35 amending Article 98.1.a of Decree No. 15

¹¹ Decree No. 14, Article 1.36.a amending Article 100.1.dd of Decree No. 15

¹² Decree No. 14, Article 1.36.b supplementing Article 100.1.g of Decree No. 15

¹³ Decree No. 14, Article 1.36.c supplementing Article 100.1.h of Decree No. 15

¹⁴ Decree No. 14, Article 1.36.c supplementing Article 100.1.i of Decree No. 15



6. Amendments made to the scope of Decree No. 119/2020/ND-CP on penalties for administrative violations in journalistic and publishing activity

As of 27 January 2022, the scope of Decree No. 119/2020/ND-CP on penalties for administrative violations in journalistic and publishing activity has been expanded to include printing services other than those listed as publishing activities. Notably, following this expansion, the applicable fines have significantly increased. The maximum fine for violating organizations in journalistic activities is VND 500 million (approximately USD 21,970) and for publishing activities and non-publishing printing activities, it is VND 200 million (approximately USD 8,790).

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