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### NEWLY ISSUED LEGAL DOCUMENTS

## 1. Conditions for a loan from the small- and medium-sized enterprise development fund

On 26 April 2024, the Government issued Decree 45/2024/ND-CP (“**Decree 45/2024**”) amending and supplementing a number of articles of Decree 39/2019/ND-CP (“**Decree 39/2019**”) dated 10 May 2019 of the Government on the organisation and operation of the small- and medium-sized enterprise development fund (“**Fund**”). Decree 45/2024 will take effect from 10 June 2024 with notable amendments and supplements related to the Fund's loan conditions that enterprises need to know to serve their loan needs as follows:

### 1.1 Direct lending principles

In addition to the 3 direct lending principles specified in Article 15 of Decree 39/2019 including:

- (1) The Fund shall make loans under agreements between the Fund and small- and medium-sized enterprises in compliance with Decree 39/2019.
- (2) Small- and medium-sized enterprises getting loans from the Fund must use the loans for proper purposes, and repay the principal and interest in an adequate and timely manner as agreed upon with the Fund.
- (3) Currency used for lending and repayment must be Vietnamese dong.

Article 1.8 of Decree 45/2024 also adds a principle that "Small- and medium-sized enterprises borrowing from the Fund that have fully repaid the principal and interest on time (except in force majeure events) will be considered for subsequent loans from the Fund.

### 1.2 Amending and supplementing loaning conditions

Article 1.9 of Decree 45/2024 has amended and supplemented a number of loaning conditions for small- and medium-sized enterprises; accordingly, the conditions after amendment will be as follows:

*a. Small and medium innovative startups* may borrow a loan from the Fund if they meet the following conditions:

- (1) To meet the criteria for small and medium innovative startups as prescribed in the Law on Support for Small- and Medium-sized enterprises and other guiding legal documents;
- (2) To have feasible production and business projects or plans that satisfy the identification criteria for small and medium innovative startups;
- (3) Ensure the capital source of owners participating in the production and production and business or plan makes up at least 20% of the total investment capital to implement that project or plan, and ensure sufficient capital for implementation of the production and business project or plan; and

(4) To meet regulations on loan security as prescribed in Decree 39/2019.

*b. Small- and medium-sized enterprises participating in sectoral clusters* will be entitled to borrow loans from the Fund when meeting the following requirements:

- (1) To participate in a sectoral cluster as prescribed in the Law on Support for small- and medium-sized enterprises and other guiding documents;
- (2) To have feasible business projects or plans in the business line of the sectoral cluster; and
- (3) To meet conditions (3) and (4) of item a above.

*c. Small- and medium-sized enterprises participating in value chains* will be entitled to borrow loans from the Fund when meeting the following requirements:

- (1) To participate in the value chain in accordance with the Law on Support for Small- and Medium-sized enterprises and other guiding documents;
- (2) To have feasible production and business projects or plans, and manufacture products falling into the value chain; and
- (3) To meet conditions (3) and (4) of item a above.

## 2. Amending regulations on issuing digital certificates to subscribers

In order to facilitate the participation of individuals and organisations in transactions in the electronic environment, on 9 May 2024, the Government issued Decree 48/2024/ND-CP ("**Decree 48 /2024**") amending and supplementing a number of articles of Decree 130/2018/ND-CP ("**Decree 130/2018**") detailing the implementation of the Law on Electronic Transactions regarding digital signatures and digital signature authentication service. Accordingly, from 9 May 2024 (the effective date of Decree 48/2024), individuals and organisations can choose to use electronic identification accounts to file applications for digital certificates and requesting recognition of foreign digital signatures in Vietnam, specifically as follows:

### 2.1 Using the electronic identification account to file applications for a subscriber's digital certificate

As prescribed in Article 1.1 of Decree 48/2024, while conducting procedures to apply for a subscriber's digital certificate, one may use citizen identity cards, identity cards, personal identification papers or level 2 electronic identification accounts, and

an organisation may use its electronic identification account for this purpose.

Accordingly, organisations providing public digital signature authentication services will exploit data in electronic chips attached to citizen identity cards, identity cards or personal identification papers; or data in electronic identification account, and the individual or legal representative of the

organisation will not have to submit paper documents and records.

## 2.2 Amending conditions for granting licenses to use foreign digital certificates in Vietnam

In addition to the requirement of providing one of the following documents (which is a condition for granting a license to use foreign digital certificates in Vietnam) to authenticate information on the digital certificate as prescribed in Article 46.1(b) of the Decree 130/2018, including:

- Business registration certificates, or investment certificates, or establishment decisions, or decisions on stipulating functions, tasks, and powers for organisations; ID cards, citizen ID cards, or passports for individuals;

- Document from a competent authority allowing foreign organisations and individuals to operate legally in Vietnam for subscribers who are foreign organisations and individuals;

- In case of being authorised to use a digital certificate, there must be legal authorisation to use the digital certificate and the subscriber's information to whom the digital certificate is issued must match the information in the authorisation document.

Article 1.2 of Decree 48/2024 also allows individuals to use level 2 electronic identification accounts, or for organisations, use electronic identification accounts, to substitute for the above documents for the purpose of authenticating information on digital certificates.

## 3. Novelties on providing and posting information about contractor selection and bidding document forms on the National Bidding Network System

On 26 April 2024, the Ministry of Planning and Investment issued Circular 06/2024/TT-BKHDT ("**Circular 06/2024**") guiding the provision and posting of information about contractor selection and bidding document forms on the National Bidding Network System. Circular 06/2024 will take effect from the date of signing, i.e. 26 April 2024 and replace Circular 01/2024/TT-BKHDT ("**Circular 01/2024**") with some notable points as follows:

### 3.1 Individuals are considered as organisations to participate in the National Bidding Network System

Compared to Article 3.8 of Circular 01/2014, Article 3.8 of Circular 06/2024 supplements the definition of organisations participating in the National Bidding Network System (hereinafter referred to as the System), accordingly, in addition to agencies and

organisations, there are also individuals who may participate in the System as contractors (individuals, groups of individuals participating in individual consulting packages; individuals, groups of individuals in innovative start-ups participating in procurement packages).

### 3.2 Responsibility for providing information to build a national

### **database on contractors and quality of goods**

As prescribed in Article 10 of Circular 06/2024, the responsibility for providing information to build a national database on contractors and the quality of goods is regulated as follows: contractors provide information about the legal status and its capacity and experience; The investor provides information about the contractor's reputation who participates in the bid; The investor or enterprise with procurement needs in centralised procurement provides information about the results of executing contracts with the contractor and information about the quality of goods that have been procured.

### **3.3 The investor is responsible for providing key information of the contract**

Article 11 of Circular 06/2024 stipulates that the investor is responsible for providing key information of the contract no later than 5 working days from the effective date of the contract. Key information of the contract includes: contract number, contract subject, contract price, contract type, package implementation time, contract term (i.e the number of days from the effective date of the contract to the date the parties complete their obligations as stipulated in the contract), the effective date of the contract, list of subcontractors (if any), scope of work of the contract, other information (if any).

### **3.4 Supplementing regulations on providing information about the master contractor selection plan**

As prescribed in Article 12 of Circular 06/2024, information about the master contractor selection plan will be posted by the investor on the National Bidding Network System no later than 5 working days from the date of the document.

When posting the master plan for contractor selection, the investor must attach documents that serve as a basis for making the master plan for contractor selection, including: (i) In-principle approvals for the program or project; (ii) Project approval decision (if any); (iii) International treaties and loan agreements for projects using ODA capital or concessional loans from foreign sponsors (if any); (iv) Plan for allocating capital for project implementation or capital sources for project implementation (if any); and (v) Relevant legal documents (if any).

At the same time, the investor must attach the decision on approval of the contractor selection master plan during the time of posting the contractor selection master plan.

### **3.5 Use of new bidding document form (except pharmaceuticals) from 26 April 2024**

Article 31.2 of Circular 06/2024 stipulates that from the effective date of Circular 06/2024 (i.e. 26 April 2024), all forms of bidding documents as prescribed in Circular 01/2024 are no longer valid to use, except Form No. 7A and Form No. 7B issued together with Circular 01/2024 which will still be valid until the effective date of the Circular of the Ministry of Health on pharmaceutical bidding at public medical facilities.

GV Lawyers would like to introduce our valued readers to an article Lawyer **Nguyen Duc Hieu** - Partner of GV Lawyers and Paralegal **Pham Thanh Mai** and **Do Phuong Khoa** titled **“A brief recap of Vietnam’s personal data protection laws”** published on The Legal 500 site on 12 April 2024.

## I. Introduction

**“Personal data” has attracted considerable attention to itself and has been the subject of many legal debates all over the world.**

Too little protection of personal data will facilitate identity theft, fraud, scams, etc., yet too much protection will adversely affect business development, and will also obscure Vietnam from achieving valuable social goals, such as safety, healthcare, scientific research[1]. Where Vietnamese legislation on personal data protection is still in its infancy and seems to follow the EU’s path, with drastic changes definitely coming along, businesses will probably need to bring themselves up-to-date on a regular basis.

Our goal is to update businesses on such legislative development, with the focus on Decree 13/2023 on Personal data protection, issued on 17 April 2023 (“**Decree 13/2023**”) by the

Government of Vietnam. It is the latest legal instrument up to the date of this Article, from which businesses can learn what data privacy protection looks like in Vietnam.

## II. A brief on how data privacy protection works

Decree 13/2023 has been set to central around how to protect personal data throughout the process through which it is harvested, processed, stored, used, and even erased in cyberspace. Therefore, this Article is going to brief on who are, other than a data subject (as defined below), involved in and caught by Decree 13/2023 and feature what personal data protection thereunder is.

### 1. Who are caught by Decree 13?

Decree 13/2023 is perhaps inspired by and developed from the General Data Protection Regulation of the EU (“**GDPR**”), though to some extent, it is tailored

to fit the context and socio-economic conditions of Vietnam. For this reason, those persons who are regulated under GDPR can also be found in Decree 13/2023, namely:

**“Data subject”** refers to the personal data[2] In the context of a business/enterprise, data subject can be employees, job candidates, clients/customers of the enterprise, and business partners; an employer who is an individual can also be deemed as a “data subject” as well. When personal data is being collected, recorded, copied, shared, disclosed, or any similar activities, it is considered **“personal data processing”**.

**“Personal data controller”** refers to an organisation or individual that makes a decision on purposes and means of processing personal data (e.g., an enterprise storing personal data lawfully that are collected from their customers).

“**Personal data processor**” refers to an organisation or individual that processes personal data on behalf of a personal data controller via an agreement (e.g., cloud data storage service provider). A personal data processor can also assume the role of a “personal data controller”, and such a data processor is called a “**personal data controller-cum-processor**” (e.g., it is enterprises that assume the functions of storing and processing). The concept of this dual-role is distinct from GDPR, but it is unclear why this concept has been introduced into Decree 13/2023.

## 2. What does the personal data protection look like under Decree 13/2023?

Here are some critical traits:

### a. Data subjects’ rights

Data subject has right to (i) be informed on personal data processing, (ii) give consent to the processing, (iii) access personal data, (iv) withdraw consent, (v) delete personal data, (vi) restrict the

processing, (vii) request to obtain their own personal data, (viii) object to the processing, (ix) file complaints, denunciations and lawsuits, (x) claim damage, and (xi) self-protection.[3]

Decree 13/2023 lays stresses on the consent-mechanism. For businesses, it is essential to seek clear and precise consent from data subjects for any stage at which their personal data is processed. Yet, the way through which the consent can be properly given or taken is not as simple as it seems, not because businesses are incompetent to design a workable system, but because there is no clear-cut compliance standard in Decree 13/2023.

Decree 13/2023 also provides some exceptional cases where data subjects’ consent may be not required: (i) in emergencies or required by law, (ii) personal data is collected from audio and video which

capture or make record of activities in public places.[4] For (i) the personal data of individuals who are declared missing or deceased, and (ii) the personal data of children, Decree 13/2023 additionally requires consent from their family member(s) when personal data of such subjects is processed.[5]

Again, there should be a set of standards for the consent-mechanism to work, and legislators are expected to set them out in the near future. In the meantime, businesses should be proactive in putting in place an easy-to-access interactive platform for data subjects to interact with businesses whereby the consent-mechanism could ensue. GDPR is what Vietnamese legislators, and regulators as well, are inspired and use as a yardstick, so it is sensible for businesses to get the consent-mechanism, whether in or applicable to Vietnam, aligned with

GDPR's relevant standards.

**b. Notification requirement**

It is the obligation of the Personal Data Controller and/or the Personal Data Processor to fulfill this requirement once they detect a personal data breach or incident. In this case, they are required to notify, in writing (hard or soft copy), the Ministry of Public Security (Department of Cyber security and Hi-tech Crime Prevention) of such a breach or incident within 72 hours (or later if there is a reason).

The notification shall be made according to Form No. 03 in the appendix of Decree 13/2023.

**c. Compliance assessment**

Businesses are required to make and archive dossiers which are subject to competent authorities' check/assessment.

There are two kinds of dossiers mandatory for businesses' preparation and

archive, namely: (i) Dossier for assessment of impact of personal data processing, and (ii) Dossier for assessment of impact of outbound transfer of personal data (applicable where personal data is transferred abroad). These Dossiers must be always ready and available to submit within 60 days from the date on which personal data is processed, and whenever required by competent authorities.[6]

Noticeably, businesses may transfer Vietnamese citizens' personal data abroad provided that they have (i) established Dossier on Assessment of impact of outbound transfer of personal data, and (ii) notified the Ministry of Public Security (Department of Cybersecurity and Hi-tech Crime Prevention) of their data transfer and contact details of the organization or individual in charge of such transfer in writing after the personal data is

successfully transferred.[7]

**d. On-site data protection officer ("DPO")**

Contact information of DPO will be put in the assessment dossiers submitted to competent authorities as said in item (c) above.

Decree 13/2023 does not require DPO must be an employee though, but if it is the case, businesses will need to have at least one employee assuming the role of a DPO.

**3. What are consequences for non-compliance?**

Besides technical risks such as data leakage and identity theft, and monetary risks like ransomware, non-compliance with data privacy regulations may also confront businesses. However, at present, there are no administrative sanctions and penalties for non-compliance with Decree 13/2023 which has been set forth, while they are still kept under discussion and consideration.



Given that Vietnamese legislators have a tendency to adopt the GDPR-based model, there is a likelihood that the administrative sanctions to be designed can bear some similarity to those of GDPR as well.

### III. Conclusion

It is predicted that Vietnamese legislators will continue to attempt to adopt principles of GDPR in strengthening their legal frameworks to secure and safeguard personal data privacy. This means that

businesses that have familiarized themselves with GDPR could find it not too difficult to comply with the personal data protection regime in Vietnam.

Even so, the emergence of artificial intelligence, commonly known as AI, poses new challenges to data protection. As AI works based on how data is imported, processed, and generated, to give out results upon users' demands, this causes concerns surrounding whether personal data is used to "feed" AI

machines without data subjects' knowledge, and if so, how personal data protection laws will address such concerns. Perhaps Vietnamese lawmakers have already commenced their research for drafting and updating legal documents to control AI along with personal data as an attempt to narrow the gap between the laws and the technology, which promises significant changes to Vietnam's personal data protection laws in the future.

[1] Orly Lobel, "The Problem With Too Much Data Privacy" (Time, 2022) <<https://time.com/6224484/data-privacy-problem/>>, accessed on 26 March 2024.

[2] "Personal data", which is defined as "electronic information in the form of symbols, letters, numbers, images, sounds, or equivalence associated with an

individual or used to identify an individual." Decree 13/2023 categorizes "personal data" into 02 subsets as Articles 9 and 10 of GDPR do: "general personal data" (e.g., name, date & place of birth, phone number, ID number, etc.) and "sensitive personal data" (e.g., health information, biometric & biological information, criminal

records, bank-related information, and personal location).

[3] Article 9 of Decree 13/2023

[4] Articles 17 and 18 of Decree 13/2023

[5] Articles 19 and 20 of Decree 13/2023

[6] Articles 24 and 25 of Decree 13/2023

[7] Article 25 of Decree 13/2023

### 1. Value added tax deduction

In principle, if the Company has input value-added tax (VAT) on goods and services used for the production and trading of goods and services subject to VAT, it will be fully deducted. In case the Company has input VAT on goods and services used simultaneously for the production and trading of taxable and non-taxable goods and services, it may only deduct the input VAT on the goods and services used for the production and sale of goods and services subject to VAT. The Company must separately account for deductible and non-deductible input VAT; if separate accounting is not possible, input tax will be deducted based on the percentage of revenue of goods and services subject to VAT compared to the total revenue of goods and services sold.

*General Department of Taxation replies to the question of Hai Vi Co., Ltd. in Official Letter No. 1897/TCT-CS dated 7/5/2024.*

### 2. Personal income tax policy for employee benefits

In case the Company establishes a policy on issuing parking passes to employees (free or discounted), the conditions and benefit levels must be specifically recorded in one of the following documents: Labour Contract; Collective Labour Agreement; Financial Regulations of Companies, Corporations, and Groups; Bonus Regulations are prescribed by the Chairman of the Board of Directors, General Director, and Director according to the financial regulations of the Company and Corporation, if this level of expenditure is consistent with

the level of determining income subject to corporate income tax as per the documents guiding the implementation of the Corporate Income Tax Law, this expense is not included in personal income taxable income.

In case the above expenditure level is higher than the current State regulations, the excessive expenditure must be included in income subject to personal income tax.

*Ha Noi City Tax Department replies to the question of Ascott International Management (VietNam) Co., Ltd. in Official Letter No. 26443/CTHN-TTHT dated 7/5/2024.*

### 3. Issuing insurance premium reducing invoices

If the Company has collected insurance premiums and invoiced customers, but due to objective reasons, it must reduce the premiums for customers or comply with agreement until the end of the insurance period in case of no loss occurrence or a loss lower than the insurance rate specified in the insurance policy, and the insurance buyer will receive a partial reduction of the insurance premium, which will be handled by the Company as prescribed in Article 9.2(dd) of Circular No. 09/2011/TT-BTC. The form and content of the generated electronic invoice must meet the regulations in Articles 10 and 12 of Decree No. 123/2020/ND-CP.

*Ha Noi City Tax Department replies to the question of Saigon-Hanoi Insurance Joint Stock Corporation in Official Letter No. 26447/CTHN-TTHT dated 7/5/2024.*

#### 4. Withholding tax

In case the Company, according to the presentation, signs a contract with a foreign non-resident individual providing brokerage services to sell the Company's goods abroad (exportation), any income from sales brokerage commission earned abroad by a non-resident individual will be determined to be the income arising outside of Vietnam that is free from withholding tax, and the organisation paying this income does not deduct personal income tax when paying brokerage commissions.

In case the Company signs a contract to hire a foreign enterprise to perform brokerage services to sell the Vietnamese Company's products in foreign markets, this brokerage service of the foreign enterprise is free from application of Circular No. 103/2014/TT-BTC.

*Binh Duong Provincial Tax Department replies to the question of MOTOMOTION Vietnam Co., Ltd. in Official Letter No. 11771/CTBDU-TTHT dated 6/5/2024.*



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## 1. Proposal to continue to extend and defer debts for enterprises

Implementing Directive No. 14/CT-TTg of the Prime Minister on conducting monetary policy in 2024, removing difficulties for production and business, and promoting growth, the State Bank (SBV) has just submitted the Government a proposal to extend the implementation time of Circular 02/2023/TT-NHNN on restructuring debt repayment time and maintaining the same debt group for another 6 months.

According to the SBV, by the end of 2023, nearly 188,000 customers have had their debt repayment terms restructured and kept the same debt group with a total value of restructured principal and interest worth more than VND 183,000 billion. Debt rescheduling or deferment not only helps enterprises reduce financial pressure, but also increases opportunities to access capital. Because if they are transferred to the bad debt group, it will be difficult for enterprises to borrow more capital for production and business.

Along with the policy of reducing interest rates, extending and deferring debts will partly help enterprises overcome capital difficulties and create a continuous production and business cycle. Delayed debt repayment will also open more opportunities for enterprises and people to overcome difficulties.

Deferment or postponement of debts means that the debts are still there, just not yet collected and the enterprise still has the opportunity to borrow new loans.

Thus, according to the proposal of the SBV, instead of ending in the middle of this year as expected, the debts of enterprises and borrowers may continue to be extended until the end of the year. The extension of Circular 02/2023/TT-NHNN is expected to create more conditions for enterprises to restore production and business.

*By antv.gov.vn*

## 2. Proposal to use a contract to buy an off-plan house to register permanent residence

The Ministry of Public Security proposes more changes in documents used to register permanent residence, including contracts to buy off-plan houses. The above proposal is in the draft decree detailing a number of articles of the 2020 Law on Residence under consultation.

Permanent residence is a place where a citizen lives stably and permanently and that has been registered with the local police. The Law on Residence currently stipulates that citizens who

want to register permanent residence must have a legal residence that belongs to them or does not belong to them but has the consent of the owner of that residence.

In the new draft, the Ministry of Public Security proposes to add many types of citizenship documents that can be used when registering permanent residence. It is a contract to buy and sell off-plan housings; Documents proving that the "red book" is being mortgaged at the

bank, handwritten sale documents, dispute-free commitment.

In addition, the Ministry of Public Security proposes an additional condition that if you want to register permanent residence in a rented house or temporarily stayed house, the house rental contract or document on temporary stay must be notarised or authenticated. This is a novelty because current regulations only require renters

and stayers to prove their "legal residence" with a rental contract or temporary stay document without the need for notarisation or authentication.

Necessary documents for permanent residence registration remain the same as before, including red book, construction permit, sales contract, gratitude house donation documents...

*By vnexpress.net*



No.	Document title	Issuance date	Effective date
<b>GOVERNMENT</b>			
1	Decree 48/2024/ND-CP amending and supplementing a number of articles of Decree 130/2018/ND-CP detailing the Law on E-Transactions regarding digital signatures and digital signature certification services.	9/5/2024	9/5/2024
2	Decree 47/2024/ND-CP of the Government regulating the list of national databases; building, updating, maintaining, exploiting and using the national database.	9/5/2024	9/5/2024
3	Decree 46/2024/ND-CP amending and supplementing a number of articles of Decree 99/2013/ND-CP regulating penalties for administrative violations in the field of industrial property where a number of articles has been amended and supplemented according to Decree 126/2021/ND-CP dated 30 December 2021 of the Government.	4/5/2024	1/7/2024
4	Decree 45/2024/ND-CP amending and supplementing a number of articles of Decree 39/2019/ND-CP on the organisation and operation of small- and medium-sized enterprise development fund.	26/4/2024	10/6/2024
5	Decree 44/2024/ND-CP prescribing the management, use and operation of road transportation infrastructure assets.	24/4/2024	10/6/2024
<b>PRIME MINISTER</b>			
1	Decision 338/QD-TTg approving the Plan to implement the National Energy Master Plan for the period 2021-2030, with vision to 2050.	24/4/2024	24/4/2024
<b>MINISTRY OF PLANNING AND INVESTMENT</b>			
1	Circular 04/2024/TT-BCT amending and supplementing a number of articles of Circular 20/2014/TT-BCT regulating the implementation of the Rules of Origin in the ASEAN - Korea Free Trade Agreement.	27/3/2024	11/5/2024
2	Circular 07/2024/TT-BKHDT detailing the form of request documents, evaluation reports, appraisal reports, inspection reports, and reports on the implementation of bidding activities.	26/4/2024	15/6/2024
<b>MINISTRY OF INFORMATION AND COMMUNICATION</b>			
1	Decision 724/QD-BTTTT promulgating a set of criteria on basic network information security requirements for surveillance cameras.	7/5/2024	7/5/2024
<b>MINISTRY OF TRANSPORT</b>			
1	Circular 11/2024/TT-BGTVT on the service prices for preparation of vehicle dossiers for motor vehicles eligible for initial inspection exemption and re-printing of motor vehicle inspection certificates and stamps.	26/4/2024	15/6/2024



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## **CONTACT US**

[info@gvlawyers.com.vn](mailto:info@gvlawyers.com.vn)

**HCMC - Head Office**

8/F, Centec Tower,  
72-74 Nguyen Thi Minh Khai,  
Vo Thi Sau Ward, District 3  
Ho Chi Minh City, Vietnam  
Tel: +84 (28) 3622 3555

**Ha Noi - Branch**

10A/F, CDC Building,  
25 Le Dai Hanh  
Hai Ba Trung District  
Ha Noi, Vietnam  
Tel: +84 (24) 3208 3555

**Da Nang - Branch**

3/F, Indochina Riverside  
Tower, 74 Bach Dang  
Hai Chau District  
Da Nang City, Vietnam  
Tel: +84 (28) 3622 3555

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