

# Cloud Computing, Data Privacy and Security



Speaker: Tuan La, Counselor and Attorney at Law, Baker & McKenzie

This presentation has been prepared for clients and professional associates of Baker & McKenzie. Whilst every effort has been made to ensure accuracy, this presentation is not an exhaustive treatment of the area of law discussed and no responsibility for any loss occasioned to any person acting or refraining from action as a result of material in this presentation is accepted by Baker & McKenzie.

Baker & McKenzie (Vietnam) Ltd., a limited liability company, is a member firm of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organisations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

© 2016 Baker & McKenzie (Vietnam) Ltd.

# Applicable Laws and Regulations in Vietnam

# Cloud Computing Definition/Registration

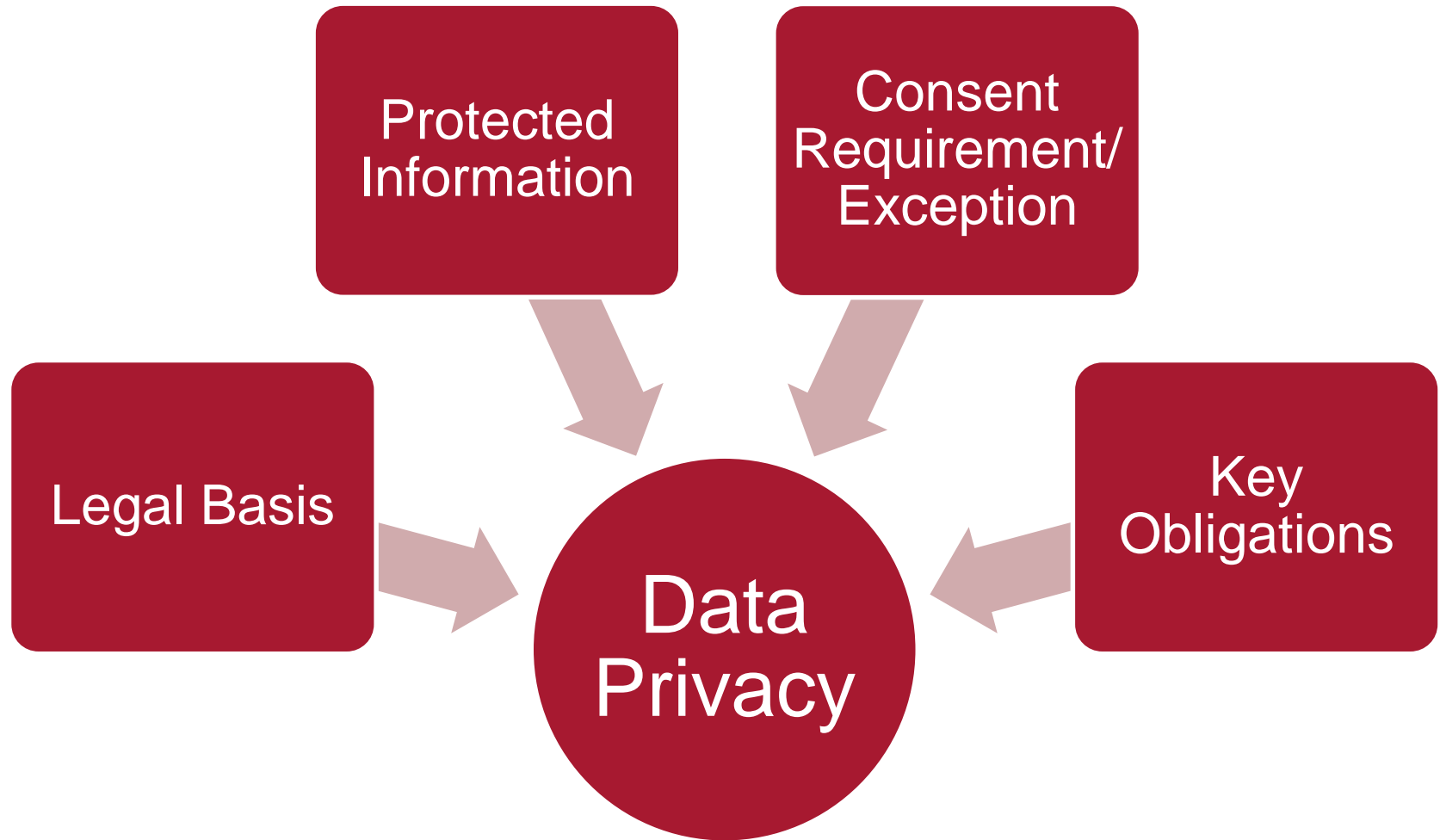
- In 2012, there was a Draft Decree on IT Services defining cloud computing as an IT service (includes infrastructure as a service, platform as a service, and software as service);
- If passed as worded, cloud computing service providers must:
  - (i) appoint a local representative in Vietnam;
  - (ii) register its service with the MIC;
  - (iii) apply for license; and
  - (iv) meet certain technical and safety standards (undefined).
- Unclear as to when this draft may be passed.

# Overview



- Relevant law
  - Data Privacy
  - Cyber Information Security

# Data Privacy



# Key obligations

## Collection

- Notification (purpose)
- Consent obligation
- Access and correction
- Transfer

## Use

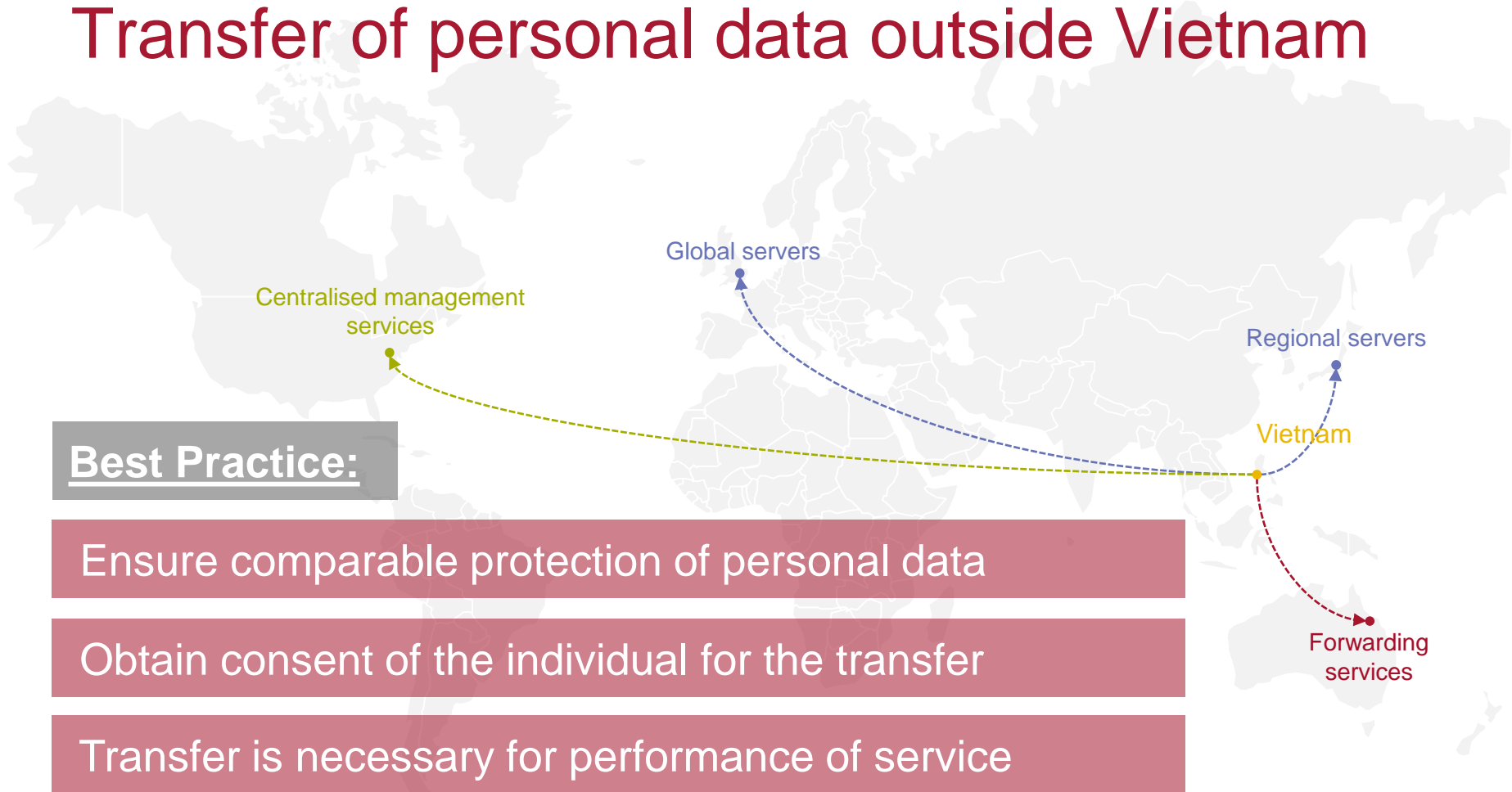
## Disclosure

## Retention

## Destruction

\* Applicable to data intermediaries

# Transfer of personal data outside Vietnam



## **Best Practice:**

Ensure comparable protection of personal data

Obtain consent of the individual for the transfer

Transfer is necessary for performance of service

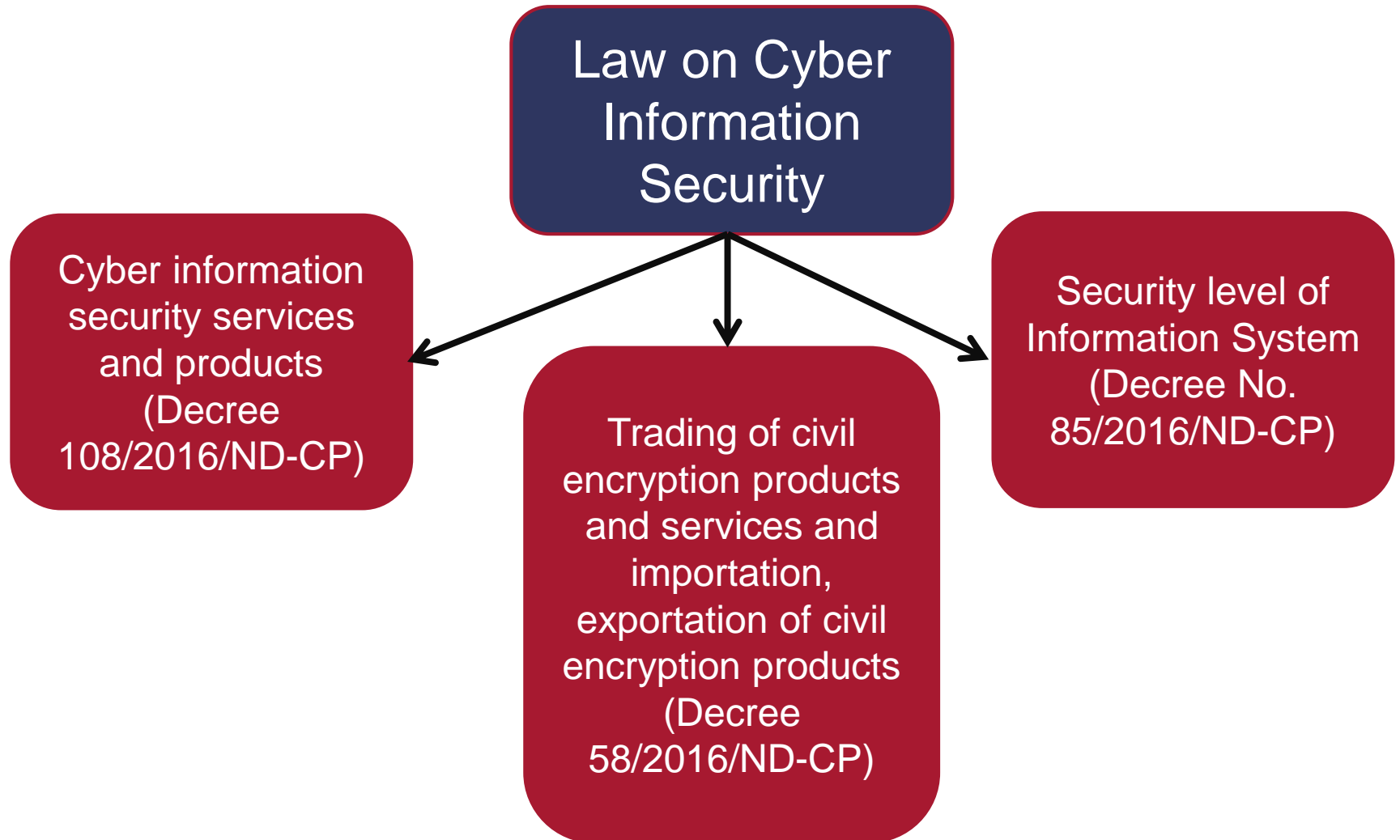
# Sanctions for Improper Use of Personal Data



**10-20 million VND** for not employing necessary security measures to protect Personal Data; OR for using Personal Data outside of the advertised purpose/without Data Subject's consent.



# For Cloud Provider: Cybersecurity



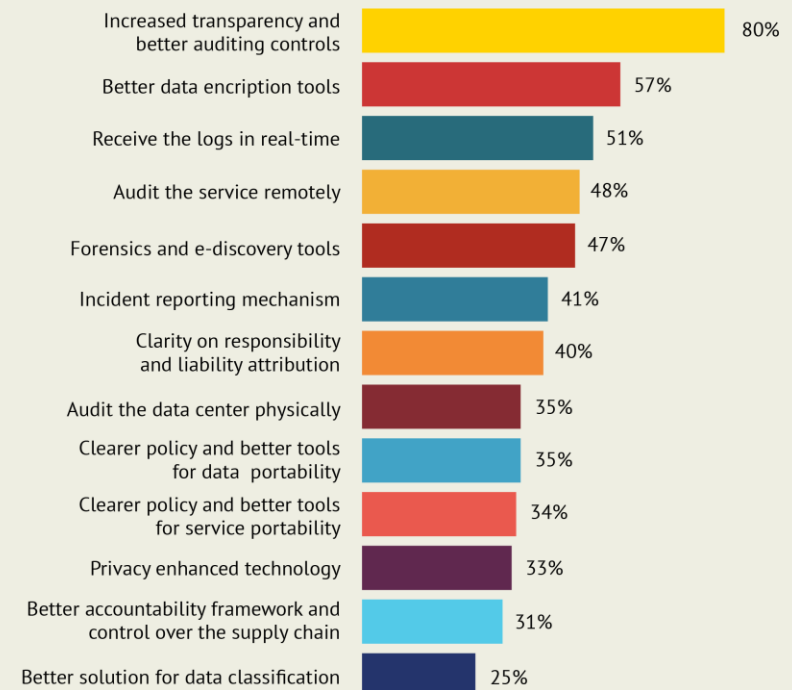
Recommendations

# What to do? (best practice)

- Know where the servers are located
- Encrypt data
- Implement security measures
  - malware detection, removal, forensic readiness
- Establish in-house policies and procedures
  - transfer, access, and processing
  - for data breach and recovery

- Choose your service provider carefully
- Check compliances with VN law (both customer and provider)
- Use 3<sup>rd</sup> party standards to evaluate service (i.e., ISO, CSA CCM)
- Negotiate contracts (limitation of liability clauses?)

## Top Features Desired from Cloud Providers



# Contacts

## Tuan La

### Foreign Registered Lawyer

Baker & McKenzie (Vietnam) Ltd.  
12th Floor, Saigon Tower  
29 Le Duan Blvd.  
District 1, Ho Chi Minh City 700000  
Vietnam  
Tel: +84 8 3829 5585  
Direct: +84 8 3520 2683  
Fax: +84 8 3829 5618  
[tuan.la@bakermckenzie.com](mailto:tuan.la@bakermckenzie.com)

This presentation has been prepared for clients and professional associates of Baker & McKenzie. Whilst every effort has been made to ensure accuracy, this presentation is not an exhaustive treatment of the area of law discussed and no responsibility for any loss occasioned to any person acting or refraining from action as a result of material in this presentation is accepted by Baker & McKenzie.

Baker & McKenzie (Vietnam) Ltd., a limited liability company, is a member firm of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organisations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

© 2016 Baker & McKenzie (Vietnam) Ltd.