

ARTICLE:

THE ELECTRONIC SIGNATURE LAW IN VIETNAM: A NOTE

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The Law on E-Transactions (No. 51/2005/QH11) was passed on 29 November 2005 by the XIth National Assembly of the Socialist Republic of Vietnam during its 8th session. Under the provisions of article 53, the law entered into force on 1 March 2006. The Government of Vietnam issued Decree 57/2006/ND-CP of the Government dated 9 June 2006 (Decree 57) implementing the Law on E-Transactions in respect of e-commerce which comes into force on 7 July 2006.

Scope

This law regulates electronic transactions in the civil, business, commercial and other sectors. The law does not apply to the grant of land use rights certificates, house ownership rights and immovable properties, inheritance documents, marriage certificates, divorce decisions, birth certificates, death certificates, bills of exchange and other valuable papers.

In principle, organizations and individuals have the right to select electronic means for transactions, and type of technology they use for electronic transactions. Additionally no technology shall be considered as the sole technology when using electronic transactions. Organizations and individuals are entitled to select methods to provide for security, safety and confidentiality when conducting electronic transactions, provided that those methods are in conformity with provisions of law.

Validity

The law recognises the legal validity of data messages. Data messages may be shown in the form of electronic data interchange, electronic documents, e-mails, telegrams, telegraphs, facsimile transmissions and other similar forms.

It is important to note that data messages may be removed from the network (by a Vietnam on-line service-providing organisation) if such data messages

are against the cultural traditions, national ethics, or are prejudicial to the national security, public order and safety, or violate other provisions of law.

Electronic signature

An electronic signature is established in the form of words, letters, numerals, symbols, sounds or other forms by electronic means, logically attached or associated with a data message, and is capable of certifying the person who has signed it as well as his or her approval to the content of the signed data message. An electronic signature will have legal validity if:

- (i) the method of creating the signature is such that it permits the identification of the signatory and to indicate his or her approval of the contents of the data message, and
- (ii) such method is sufficiently reliable and appropriate for the purpose to which the data message was originated and sent.

An electronic signature shall be considered secure, provided it satisfies conditions stipulated by the law, or is certified by an electronic signature certification service providing organisation.

Foreign electronic signatures and electronic certificates may be recognised in Vietnam if such electronic signatures or electronic certificates have the same level of reliability as those provided for by law. The determination of the reliability of foreign electronic signatures and electronic certificates must be based on recognised international standards or treaties to which Vietnam is a signatory. Further guidelines on the recognition of foreign electronic signatures and electronic certificates will be issued by the Government in due course.

This law also provides for the rights and obligations of the electronic signature certification service providing organisations as well as conditions for providing electronic signature certification services.

Electronic contracts are acknowledgeable and

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protected. The legal validity of an electronic contract cannot be denied for the sole reason that it is expressed as a data message. Parties shall have the right to agree on the use of electronic means in entering into and executing contracts; technical requirements, certification, conditions to ensure integrity and confidentiality related to such electronic contracts. The entering into and execution of an electronic contract shall comply with provisions of this law and any relevant contract laws in force.

Implementing decrees

It is necessary to issue separate decrees implementing different aspects of this law. However, so far only Decree 57 has been issued. Decree 57 regulates the use of electronic documents in commerce and commerce-related activities in Vietnam, or outside Vietnam in the case of agreement between the parties. However, this Decree is not applicable to the use of electronic documents such as bills of exchange, promissory notes, bills of lading, delivery bills, or any negotiable documents which allow the holders or beneficiaries to receive goods, services or money.

Under Decree 57, electronic documents comprise of contracts, proposals, notices, invoices or other documents in relation to entering into or the execution of contracts. An electronic document has legal validity if it contains accessible information for use. If the offeror proposes to sign a contract through information systems and such proposal is approachable by the offeree, electronic documents or related documents containing the content of the contract must be provided in a reasonable period of time. Those documents must be achievable and usable.

Decree 57 also sets forth acts of violation in relation electronic commerce, such as (i) change, deletion, cancellation, copying, disclosure, illegal removal, forgery and appropriation of e-documents; (ii) the infringement and destruction of information systems

used for e-commercial activities; and (iii) the generation, sending, transmission, receiving and handling of electronic documents for the purpose of performance of illegal acts.

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