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LEGAL UPDATE

DRAFT LAW ON E-TRANSACTIONS



Recently, the Ministry of Information and Communication of Vietnam (**MIC**) released a new draft Law on E transactions (**Draft Law**) for public comments, which will supersede the existing Law on E-Transactions (**Law on E-Transactions 2005**). The deadline for public comments is 4 July 2022. It is expected that the Draft Law will be presented for consideration and approval of the National Assembly in April 2023. In general, the Draft Law proposes amendments and supplements existing provisions about digital platforms, digital signatures, digital identity, and e-contracts. In this update, we set out some notable points of the Draft Law.

1. Expansion of Scope of Application

The Law On E-Transactions 2005 does not apply to several activities including the issuance of certificates of land use rights, house ownership and other immovable properties, inheritance documents, marriage certificates, decisions on divorce, birth certificates, death certificates, bills of exchange and other valuable documents. The Draft Law no longer provides for these exempted activities. It stipulates that this law will regulate e-transactions related to the State's activities as well as economic, social, civil, commercial, financial, and banking activities, and other areas as prescribed by the law. Accordingly, the Draft Law is expected to expand the application of regulations on e-transactions to more areas, subject to the regulations of specialized laws.

2. New Definition and Requirements for Digital Platforms

Under the Draft Law, digital platforms are introduced for the first time as *“electronic trading systems, using digital technology to create a network environment for organisations, businesses, individuals to interact, transact, provide services, products, goods, which can be used immediately, simply, conveniently, and flexibly, and participants do not need to participate in their management, operation, and maintenance”*. Additionally, the Draft Law classifies digital platforms into the following categories:

- Intermediary digital platforms;
- Social network/online communication network platforms;
- Online search and data analysis platforms;
- Digital content sharing platform, online digital application;
- Online communication platform;
- Online advertising platforms;
- E-commerce trading platforms;
- E-finance platforms, e-banking, online payments;
- Cloud computing platforms;
- Operating system platforms; and
- Online sharing cooperation economy platforms.

These digital platforms are under the management and supervision of specialized authorities (e.g. MIC, the Ministry of Industry and Trade, the Ministry of Finance, and the State Bank of Vietnam) and must adhere to applicable regulations.

Digital platform providers have the following obligations:

- To register their e-transaction system and ensure fulfillment with certain technical requirements concerning the e-transaction system;
- To satisfy the relevant technical requirements and requirements on cyber information security and cybersecurity;
- To publish terms of service and privacy policies;
- To provide tools/mechanisms for users to notify/report issues concerning violating information or quality of goods and services;
- To remove information that infringes the laws; and
- To protect the users' privacy.

3. Large Platforms and Dominant Platforms:

Intermediary digital platforms which meet a threshold of users (to be specified by MIC) will be considered as large platforms. Dominant platforms are large platforms that have a dominant position and play a significant role in the market. The Draft Law contains new provisions on the obligations for the so-called large platforms and dominant platforms. Accordingly, these platforms shall have other obligations in addition to the general obligations of intermediary digital platforms.

3.1 Large platforms

Large platforms shall comply with the following additional obligations:

- Analyse any substantial systematic risks arising from the function or the use of the platform (e.g. dissemination of illegal information, negative impacts on personal lives, freedom of the press, children's rights, national health and security);
- Implement measures mitigating the above risks;
- Report annually to competent authorities; and
- Appoint one or multiple officers to supervise the compliance with the large platform's obligations.

3.2 Dominant platforms

Dominant platforms shall comply with the following additional obligations:

- Provide users an option to turn off algorithmic recommendations, and to stop providing related services when requested accordingly;
- Notify users with the use of algorithmic recommendations on the platform in a clear and public manner;
- Allow end-users to uninstall any application software that is pre-installed on the Dominant Platforms, which such uninstallation does not affect the basic technical functions of such platform;
- Not to use any algorithmic recommendations to prevent users from making an accurate decision when buying goods/services, and make users over-consume; and
- Not to use data collected from the activities of sellers and service providers on the platform for the purposes of competing with the same sellers or service providers.

4. Electronic Agreements

Electronic agreements include the following in accordance with the Draft Law:

- Electronic agreements between
 - organisations and individuals;
 - users and organisations and enterprises operating digital platforms and electronic trading systems; and
 - persons and electronic means;
- Smart agreements; and

- Other types of electronic agreements.

The Draft Law provides a definition for smart agreements as *an electronic contract in which agreements or arrangements are automatically implemented by electronic means*.

5. Steps to Enter into Electronic Agreements

The Draft Law defines five stages of contract formation, which are not specified in the Law on E-Transactions 2005:

- Notice of invitation to request the conclusion of the electronic agreement;
- Offer to conclude the agreement;
- Review and confirm the content of the agreement;
- Reply to the offer of contracting; and
- Termination of request for conclusion of the agreement.

6. Data Protection in E-Transactions

The Draft Law proposes the protection of data in an e transaction, which is divided into three levels of importance. Organisations and individuals processing the data shall classify the relevant data and implement the data protection plan subject to the relevant importance level. The Draft Law also provides that the cross-border transfer of "level-three-importance" data requires a data security assessment under provisions to be specified by MIC. The classification of data in e-transactions and the management of the cross-border transfer of data are still in the making.

7. Electronic Signatures

The Draft Law provides clearer and stricter criteria for determining the legal validity of electronic signatures. Accordingly, if the law requires a document to be affixed with signatures, electronic signatures shall be deemed as secure and satisfying such requirement if they meet the following criteria:

- Allowing the identification of the signers;
- Ensuring the contents of the data message are not changed;
- Created by electronic means to ensure the safety, unique control of the signers at the time of signing; and
- Certified by organisations providing secure electronic signature authentication services.

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