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# LEGAL UPDATE

THE 2023 LAW ON E-TRANSACTIONS





The current Law on E-Transactions, which came into force in March 2006 (the **Current Law**), demonstrates limitations in addressing emerging issues resulting from the development of digital technology globally. After more than 17 years, the law appears to be out-of-date because it lacks regulations governing situations beyond its original scope.

The new Law on E-Transactions will take effect on 1 July 2024 (**2023 Law on E-Transactions**).

In this Legal Update, we will discuss several remarkable changes in comparison to the Current Law.

## 1. Scope

The 2023 Law on E-Transactions extends its coverage to include the following areas that were excluded in the Current Law:

- Issuance of certificates for land use rights and ownership of real estate property;
- Inheritance records;
- Marriage certificates;
- Divorce decisions;
- Birth and death certificates; and
- Bills of exchange.

This expansion of the fields covered under the 2023 Law on E-Transactions would allow all relevant sectors to exercise e transactions. However, whether e-transactions are allowed, in part, in whole or not at all will be subject to the laws governing the substance, type and formality of the concerned transactions.

## 2. E-Signatures

Under the Current Law and Decree No. 130/2018/ND-CP guiding e-signatures, a document which contains an e signature, is deemed to be legally valid if it satisfies the following conditions:

- a. A valid digital certificate verifies the e-signature and/or e-stamp.
- b. The document has been created by using the

corresponding private or public key recorded on the digital certificate and the certificate has been granted by the competent authorities or licensed organisations in Vietnam.

- c. The private key is under the sole control of the signatory at the time of signing.

Currently, only e-signatures certified with a digital certificate granted by competent authorities or licensed organisations in Vietnam are recognised as legally valid.

In addition to the recognition of legally valid e-signatures which comply with the above conditions, the 2023 Law on E Transactions classifies different types of e signatures and supplements further conditions for these types of e signatures to be recognised in Vietnam:

- a. A private electronic signature (**PES**) or specialised e signature (*chữ ký điện tử chuyên dùng*), which any organisation can create for internal use. However, to ensure the PES's validity is equivalent to a wet signature, it must be registered with the Ministry of Information and Communications (**MIC**) for a safety certificate. Following the enactment of the 2023 Law on E Transactions, MIC will provide detailed guidance on how to register the PES with MIC;
- b. A public digital signature (*chữ ký số công cộng*), which is used for public activities and is certified by a digital certificate granted by a licensed organisation in Vietnam.
- c. A specialised e-signature for public services (*chữ ký số chuyên dùng công vụ*), which is intended for public service activities implemented within governmental authorities and that is certified by a digital certificate granted by a licensed organisation in Vietnam.

Other than the above categories of e-signatures, which will be recognised after being registered with MIC or certified by a licensed organisation in Vietnam, the 2023 Law on E Transactions also recognises the legal validity of foreign e signatures and foreign e-signature certificates, provided that the foreign e-signatures and foreign e-signature certificates meets certain conditions. One of those is that the provider of the foreign e-signature certificate must have a representative office in Vietnam.

### 3. Trust Services

In general, *trust services* in e-transactions refer to the mechanisms and processes that ensure the security and authenticity of e-transactions, especially those involving the exchange of sensitive or confidential information. The 2023 Law on E-Transactions provides three categories of trust services:

- Timestamp Generation Service;
- Data Message Certification Service; and
- Public Digital Signature Certification Service.

These services are not new and were previously mentioned in Decree No. 130/2018/ND-CP. However, these are now codified and collectively referred to as *trust services* in the 2023 Law on E-Transactions, they are.

The 2023 Law on E-Transactions explicitly specifies that trust services are conditional business lines, and any providers offering these services must obtain the required license issued by MIC.

### 4. E-Contract

The 2023 Law on E-Transactions not only recognises the legal validity of e-contracts but also introduces new regulations to facilitate the formation and completion of e-contracts through the so-called automated information systems. While the 2023 Law on E-Transactions does not provide specific guidance on implementing e-contracts through these systems, it is expected that further instructions will be provided on how to conclude and implement e-contracts for various specialised transactions. These regulations are aimed at legitimising the use of automated information systems as a valid means of entry into an agreement.

### 5. Open Data

The 2023 Law on E-Transactions also introduces new provisions regarding open data from state agencies, which is defined as “data made available by an agency for public use, reuse, and distribution without restriction.”

Organisations and individuals are permitted to access and use open data without the need for identification, and they can do so without any restrictions. They have the freedom to copy, share, exchange, combine it with other data, and use it for both profit and non-profit activities. However, they are prohibited from selling open data that has been used by state agencies.

Businesses and investors in Vietnam can leverage public data to gain insights, make informed decisions, and develop business strategies. One example of open data in Vietnam is enterprise registration data, which is accessible on the website of the National Business Registration Portal ([dangkykinhdoanh.gov.vn](http://dangkykinhdoanh.gov.vn)). This website provides access to information such as the enterprise's legal name, registration number, business type, address, and owner or legal representative.

### 6. Admissibility of Digital Evidence

The 2023 Law on E-Transactions retains provisions from the Current Law, reaffirming that a data message, which refers to an electronic message or communication containing data, information, or instructions transmitted or stored electronically, cannot immediately be rejected as evidence. However, to be accepted as evidence, it must meet certain conditions under both the 2023 Law on E Transactions and the relevant procedural laws of Vietnam, including the reliability in the chain of transmittance and storage of the data message.

Although the 2023 Law on E-Transactions relies on the procedural laws of Vietnam to further interpret and determine the validity and admissibility of digital evidence, the prevailing procedural laws do not yet contain specific regulations about this issue. Therefore, it is worth noting that the burden of proving the admissibility of an electronic message rests with the party seeking to rely on it as evidence. The court or tribunal will then accordingly evaluate the electronic message and determine its admissibility and probative value, based on the specific circumstances of the case as well as the applicable laws and regulations.

### 7. Conclusion

The 2023 Law on E-Transactions is expected to modernise and refine the existing legal framework to catch up with the potential situations of the rapidly evolving landscape of e-commerce and digital technology. It anticipates the widespread adoption of e-signatures for transactional documents, aligning with the government's strategy of implementing digital government.

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