

The logo for Fraser's Law Company is a dark blue rectangle containing the word "FRASERS" in large, white, sans-serif capital letters. A small yellow dot is positioned above the letter "E". Below "FRASERS", the words "LAW COMPANY" are written in smaller, white, sans-serif capital letters, with spaces between the words.

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A close-up photograph of a hand holding a black pen, with the pen tip pointing towards the left. The background is a soft, out-of-focus gradient of light and dark tones, suggesting a professional setting.

The New Law on E-Transactions

August 2023



The National Assembly of Vietnam passed the former Law on E-transactions (**Former Law**) 18 years ago at the early stages of Vietnam's information technology infrastructure. Given the ever-increasing demands of internet users and the burgeoning establishment and operation of digital platforms and services, the Former Law reveals several drawbacks which necessitate further amendments to reflect the fast-growing digital economy in Vietnam.

On 22 June 2023, the National Assembly adopted the new Law on E-Transaction (**New Law**), which supersedes the Former Law as from 1 July 2024.

We discuss the key features of the New Law which may have an impact on the operation of the private sector especially in the context of cross-border transactions with foreign contracting parties.

1. What are the differences between e-signature and digital signature?

“E-signatures” are commonly interchanged with “digital signatures”. However, they are not referred to as the same concept under either the Former Law or the New Law. It is noteworthy that there is no significant difference between the Former Law and the New Law in terms of the definitions of “e-signature” and “digital signature”.

According to the New Law, an e-signature means a signature created in the form of electronic data attached to or logically combined with a data message to certify the signatory and acknowledge his/her consent to the contents of the data message. Meanwhile, a digital signature means an e-signature using an asymmetric cryptography including a private key for signing and a public key for verifying the digital signature.

Therefore, a scanned copy of a “wet-ink” signature may constitute an e-signature if it has the qualification of an e-signature as defined above. Notwithstanding, a scanned copy of a “wet-ink” signature may not meet the criteria of a secured specialised e-signature under the New Law for the purpose of being legally recognised in Vietnam with equal validity as an original “wet-ink” signature. Please refer to Section 2 below for further discussion of such criteria.

2. What are the criteria for e-signatures in the private sector to be legally recognised in Vietnam?

The New Law distinguishes three categories of e-signatures namely (i) specialised e-signatures, (ii) public digital signatures, and (iii) specialised digital signatures for public use, and set out specific criteria for each category. For the operation of organisations or entities in the private sector, the relevant category is “specialised e-signatures”.

A specialised e-signature will be lawfully recognised with equal validity as a “wet-ink” signature if it meets the following criteria (***E-signature Criteria***):

- (i) Being capable of authenticating the signatory and his/her approval of the contents of a data message;
- (ii) The data creating the e-signature (i.e. e-signature creation data) are only attached to the approved contents of the data message;
- (iii) Only the signatory has control of the e-signature creation data at the time of signing;
- (iv) The contracting parties may verify the validity of the e-signature according to the conditions agreed upon;
- (v) Being qualified as a secured specialised e-signature (i.e. being certified by the Ministry of Information and Communications as a secured specialised e-signature).

3. How are e-signature certificates used in Vietnam?

An “e-signature certificate” is a data message certifying that an organisation, entity, or individual is the true signatory of the e-signature. An e-signature certificate may be issued by a Vietnam-domiciled authentication service provider (**Domestic Provider**) or a foreign-domiciled authentication service provider (**Foreign Provider**).

The New Law is silent as to the circumstances under which an e-signature certificate issued by a Domestic Provider may be used in the private sector. The New Law only provides the framework for digital signature certificates issued by Domestic Providers for usage in the context of “public digital signatures” and “specialised digital signatures for public use” categories.

4. Can e-signatures authenticated by, and e-signature certificates issued by Foreign Providers such as DocuSign be used in Vietnam?

E-signatures authenticated by Foreign Providers (**Foreign E-signatures**) and e-signature certificates issued by Foreign Providers (**Foreign Certificates**) may be recognised for usage in Vietnam provided that:

- (i) The Foreign Provider which issued Foreign Certificates has been recognised in Vietnam upon the satisfaction of the following requirements:
 - (a) Having been lawfully incorporated and operating in a foreign country;
 - (b) Having obtained a technical report with respect to the e-signature authentication system audited by an accredited agency in the foreign country where it has been incorporated;
 - (c) Having updated the status of the Foreign Certificate in the trust service system of the relevant Vietnam State body;
 - (d) Having established a representative office in Vietnam;
- (ii) The Foreign E-signatures and Foreign Certificates must be compatible with the technical standards and regulations on e-signatures and e-signature certificates according to:
 - (a) Vietnam law;
 - (b) International standards recognised in Vietnam; or
 - (c) International treaties to which Vietnam is a member country
- (iii) The Foreign Certificates are issued on the basis of adequate and verified identity information of the foreign-domiciled signatories.
- (iv) The Foreign E-signatures and Foreign Certificates are used by:
 - (a) Foreign individuals or entities, or
 - (b) Vietnamese individuals or entities who transact with foreign individuals or entities of a foreign jurisdiction where Domestic Providers have not been recognised (collectively, **the Eligible Users**).

The Ministry of Information and Communications has been assigned to provide further guidance on the recognition of Foreign Providers, Foreign E-signatures, and Foreign Certificates.

5. Are Foreign E-signatures and Foreign Certificates acceptable in cross-border transactions?

Foreign E-signatures and Foreign Certificates are permitted for usage in cross-border transactions provided that such Foreign E-signatures or Foreign Certificates:

- (i) Have been created by or issued to foreign-domiciled individuals or entities without any local presence in Vietnam; and
- (ii) Have a validity (i.e. having been recognised according to Section 4 above) in the data message that has been delivered to the Vietnam contracting party.

6. Is it a mandatory requirement to affix a corporate seal to the e-signature for its validity?

According to the Former Law, in the event that a law requires a document to be affixed with the corporate seal of an entity or organisation, a data message will be deemed to have satisfied such “seal” requirement if the e-signature is secured and authenticated.

The New Law has replaced the “seal” by “certification” requirement. In other words, under the New Law, in the event that a law requires a document to be “certified” by an organisation or entity, a data message will be deemed to have satisfied such “certification” requirement if it is signed by a secured specialised e-signature or digital signature of such organisation or entity. It may be inferred that “certification” refers to the seal requirement and that no seal is required if a document is signed by a secured specialised e-signature.

Please contact us if you have any questions relating to this Legal Update.

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