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## E-Commerce in AEC: Vietnam's Regulatory Framework

In 2010, more than 50 percent of surveyed businesses in Vietnam used electronic means, such as e-mail or websites, to carry out their trading activities. Over the past six years, Vietnam has developed a legal framework that aims to facilitate online transactions, provide confidence in their legal validity, and at the same time protect the interest of consumers. Behind this development was the commitment made by Vietnam and other ASEAN member countries to implement a harmonized legal infrastructure for e-commerce in the ASEAN Economic Community by 2015.

### Background

The first e-ASEAN Reference Framework for Electronic Commerce Legal Infrastructure signed in 2001, among other things, aimed to help ASEAN members without e-commerce laws to accelerate the drafting of their own laws. These countries were advised to apply the UNCITRAL Model Law on Electronic Commerce (1996) when drafting their e-commerce laws. In 2005, Vietnam passed the Law on Electronic Transactions, which largely reflected the ideologies of the UNCITRAL Model Law.

The next step was to harmonize laws among member countries in order to facilitate free flow of goods and services. Consequently, the member states have created a Roadmap for an ASEAN Community for 2008–2015, in which member states were required to facilitate mutual recognition of foreign digital signatures in ASEAN by 2011 and to build a fully harmonized legal infrastructure for ASEAN e-commerce by 2015.

### Electronic Signatures

The main vision behind the UNCITRAL Model Law on Electronic Commerce was to provide a set of laws that (1) ensured that paper documents and electronic transactions were treated equally by the law, and (2) did not discriminate between different forms of technology.

The current assessment of how well these principles have been applied in Vietnam is problematic. On the one hand, Article 11 of the Law on Electronic Transactions provides that any information in data messages cannot be disclaimed of legal validity only because such information is in the form of a data message.

On the other hand, when assessing Article 11 against provisions on e-signatures and further implementing regulations, it is questionable whether electronic transactions are treated equally with traditional transactions and whether the laws are neutral in terms of technology. Article 21 provides a broad definition of electronic signature as “created in the form of words, script, numerals, symbols, sounds or in other forms by electronic means, logically attached or associated with a data message and shall be capable of certifying the person who has signed the data

message and certifying the approval by such person with respect to the content of the signed data message.” In different jurisdictions, electronic signatures are interpreted broadly and may even include a simple facsimiled signature or typed name in the e-mail. This broad definition allows foreign jurisdictions to hold various e-transactions as legally binding.

In Vietnam, Decree 26/2007/ND-CP stipulates that where the law requires a document to be signed or affixed with a seal of a body or institution, the requirement is satisfied if such a data message is signed by a digital signature. A digital signature should be distinguished from an electronic signature. Digital signatures are also called cryptographic signatures, as they use asymmetric cryptography to generate the signature. Therefore, when the law requires a seal or a signature, this requirement can only be met by a data message containing a specific technology—a digital signature, which is provided by a certified organization providing digital signature certification services in Vietnam.

However, Decree 56/2006/ND-CP on e-commerce stipulates that an e-document is regarded as having a signature of a party if the method used to identify the signatory and indicate the signatory's approval of the signed e-document is sufficiently reliable for creating and interchanging e-documents. When reviewing the above with the implementing Circular 09/2008/TT-BCT, the interpretation follows that a consumer entering into a contract via a commercial website is not required to have a digital signature, if other methods were used to identify the consumer.

### Mutual Recognition of Foreign Digital Signatures

According to Decree 26 and implementing regulations, in order for foreign signatures to be recognized as legally valid in Vietnam, the foreign digital signature certification service providers must obtain a certificate from the Ministry of Information and Communications. Obtaining this certificate is subject to conditions relating to international treaties, certification in the home country, digital signature reliability, and representative office presence in Vietnam to resolve issues.

A new regulation, Decree 106/2011, has been implemented recently to amend several provisions of Decree 26. The above requirements, however, have not been amended.

### Consumer Protection

By 2011, Vietnam completed the implementation of a legal framework on consumer protection. The Law on Protection of Consumers' Rights was passed in 2010 and implementing Decree 99/2011/ND-CP passed in late 2011. The regulations provide basic protection to consumers engaging in electronic transactions by requiring suppliers to provide certain information about the transaction to the consumer. Consumers are also given the default right to unilaterally terminate the contract if the supplier does not provide the information. The law allows disputes between consumers and organizations to be resolved by arbitration.

### Conclusion

Although drastic steps have been taken to create a legal framework to regulate e-commerce in Vietnam, the implementing regulations are not always consistent with best practices. A more effective system for implementing mutual recognition of digital signatures is necessary for Vietnam to prepare for harmonization of e-commerce legal infrastructure in the AEC by 2015. 🏠