

NEW REGULATIONS OF THE LAW ON E-TRANSACTIONS

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After 17 years of implementation, the provisions of the Law on E-Transactions 2005 have revealed certain shortcomings and limitations when implemented in practice, and are no longer suitable for economic and social development. In order to overcome such limitations and improve the regulations on e-transactions, the Law on E-Transactions 2023 was promulgated by the National Assembly on June 22, 2023, and will take effect from July 1, 2024. In this Legal Newsletter, NHQuang&Associates will analyze some new regulations of the Law on E-Transactions 2023.

Amending and supplementing regulations related to data messages

Previously, the Law on E-Transactions 2005 regulates that the forms showing data messages include *“the forms of exchanges of e-data, e-documents, e-mails, telegram, telegraphy, faxes, and other similar forms”*. Article 7, Law on E-Transactions 2023 amends and expands the scope of forms showing data messages as follows:

- (i) Data messages are shown in the form of exchanges of e-texts, e-papers, e-certificates, e-documents, e-contracts, e-mails, telegrams, telegraphy, faxes, and other forms of electronic data exchange according to the legal provisions.
- (ii) Data messages are created, generated during transactions, or converted from paper documents.

The Law on E-Transactions 2023 also supplements regulations on requirements for converting the forms between paper documents and data messages in Article 12. Accordingly, the conversion from the form of paper documents into the form of data messages must meet certain requirements such as (i) the information in the data messages must be intact as shown in paper documents, (ii) the contents of the data messages are accessible and usable for reference. Similarly, the conversion from the form of data messages into the form of paper documents also must meet the following conditions (i) there must be information to identify the information system and the agency managing the information



system that creates, sends, receives, stores the original data message for lookup, (ii) the e-document must contain the signature, seal (if any) of the agency or organization performing the conversion in accordance with legal regulations, etc.

According to the assessment of the Ministry of Information and Communications, the regulations of the Law on E-Transactions 2005 related to the validity of data messages are still unclear. Therefore, the amendments and supplements of regulations related to data messages in the Law on E-Transactions 2023 have overcome the above limitations, ensuring the validity and non-repudiation of data messages, thereby affirming the validity of e-transactions.

Amending and supplementing regulations on e-signatures

The Law on E-Transactions 2023 provides a new definition of e-signature as *“a signature created in the form of e-data logically attached with or associated with a data message to certify the signer and affirm the approval of such person to the data message”*, replacing the definition in the Law on E-Transactions 2005 which is *“An e-signature is established in the form of words, letters, numbers, symbols, sound or other forms by electronic means, logically attached with or associated with a data message, which has the ability to certify the data message signer and the approval of such person to the content of the signed data message”*. The Law on E-Transactions 2023 also classifies e-signatures into 3 types according to the scope of use as follows:

- (i) Specialized e-signature – e-signature created by an agency or organization and used exclusively for the operation of that agency or organization in accordance with its functions and tasks;
- (ii) Public digital signature – digital signature used in

public activities and secured by a public digital signature certificate;

(iii) Specialized digital signature for official use – digital signature is used in activities of public service and secured by the specialized digital signature certificate for official use.

In which, specialized e-signatures must meet all requirements such as data to create specialized e-signatures are only associated with the contents of the approved data message, and the validity of specialized e-signatures can be verified according to the conditions agreed upon by the involved parties.

In addition, the Law on E-Transactions 2023 also supplements regulations on conditions for foreign e-signature authentication service providers to be recognized in Viet Nam in Article 26. For example, foreign e-signature authentication service providers must (a) be legally established and operate in the country of operation registration, (b) have a technical audit report of the system providing e-signature authentication services by an auditing organization that operates legally in the country of operation registration, (c) have a representative office in Viet Nam.

Compared to the provisions of the Law on E-Transactions 2005, the Law on E-Transactions 2023 supplements many new contents to meet current economic and social development conditions such as regulations on the classification of e-signatures, recognition of foreign e-signature authentication service providers in Viet Nam. In addition, the amendments and supplements to regulations related to e-signatures aim to specify the levels of validity of e-signatures so that e-signatures can match the diverse needs of e-transactions. This is the basis to ensure the efficiency of applying e-signatures in practice and a prerequisite for implementing secure e-transactions.

Supplementing regulations related to trust services

Trust services are conditional business investments, including 3 services:

(i) *Timestamp service* is the service to attach information on time to data messages. The timestamp is created as a digital signature. The time attached to a data message is the time when the data message is received by the timestamp service

provider and authenticated by the timestamp service provider;

(ii) *Data message authentication service* includes 2 services: (a) Storing and confirming the integrity of data messages and (b) Sending and receiving secured data messages;

(iii) *Public digital signature authentication service* is the public digital signature authentication service provided by a public digital signature authentication service provider.

To be entitled to provide the above-mentioned trust services, a trust service provider must obtain a business license issued by the Ministry of Information and Communications with a term of 10 years and meet the following conditions such as (i) the provider must be an enterprise legally established and operates in Viet Nam, (ii) the provider's finance, managing personnel and technical personnel must meet the conditions of each type of trust service, and (iii) the provider must have a technical plan for service provision suitable for each type of trust service.

Regulations on trust services are new ones supplemented in the Law on E-Transactions 2023 to ensure the trust of agencies and organizations in e-transactions, to meet the needs of applying e-transactions in practice, conforming to development trends. It is also an important factor in ensuring the validity, service quality, safety, and security of e-transactions and the consistency with the applicable legal regulations.

The Law on E-Transactions 2023 plays an important role in creating the basic legal framework for e-transactions. Enterprises should update and study the regulations of the Law to apply appropriately in transactions related to production and business activities. NHQuang will update the guiding documents of the Law so that Clients can quickly have information for practical implementation.

