

BASIC LEGAL FRAMEWORK ON E-TRANSACTION IN VIETNAM

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I. Reviewing the legal development of e-transaction in Vietnam

1. Information technology (IT) and media has been and is swiftly developing in diverse forms in virtually most of countries around the world. These technologies are crucial means to process and transmit information in the modern world. In the context of robust globalization, these instruments have an increasingly important role to play in the administration of agencies, organizations and enterprises in the public as well as the private sector. At the same time, they have enormous impacts on how we organize our social life and economy. The old paradigm of building and implementing law in our society is currently subject to profound impact of Internet and the inherent characteristics of this sort of technology.

In the world today, the tendency is that law on e-transaction - meaning business transaction is undertaken through electronic media (Article 4, para.4, p.2) usually prescribes three categories of fundamental issues: 1) recognizing e-transactions (by acknowledging the legal effect of data-based messages); 2)

accepting e-signature (digital signature) with a view to guaranteeing safety and security of information systems; 3) providing aspects related to e-transactions, which include: rights and duties of net service providers; online payment; online intellectual property rights protection; online consumers' rights protection; protection of online personal data; cyber crimes and infringements; and, online dispute settlement regime.

Depending on development level of individual countries, legal norms on e-transactions are formulated to follow either or one of the five directions:

a. Building a peculiar legal act that covers entirely the three categories aforementioned. By doing this, it would help us to bypass possible revision, supplementaries to existing legal documents and to lay our timely norms governing e-transactions. Nevertheless, such a law certainly correlates other fields; hence it is not easy to build the law, requiring a highly qualified legislative capacity.

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b. Developing different legal acts, each of which shall address specific issues within the three categories. This way requires no revision to relevant laws in effect; is likely to facilitate formulation of legal documents regulating non-identical aspects of e-transaction. However, it requires having an institution in place to conduct exclusively research and to recommend policies on information technology.

c. Formulating a separate law that can legalize data-based messages and/or e-signature (digital signature). Other issues related to e-transaction shall be governed by the revision and supplement of sector-directed laws.

d. Building a peculiar law that recognizes legal validity of data-based messages and/or e-transaction (digital signature). This law shall also cover some other crucial issues such as rights and duties of online service providers, e-payment. And, the remained issues related to e-transaction shall be regulated by the revision and supplement of sector-directed laws.

e. Having no new law, but revising and supplementing laws in effect, and providing relevant bylaws (see more: 3, pp. 55-56).

2. For Vietnam to execute effectively e-transaction, and to comply with international commitments, apart from setting up a national database, expanding telecommunication and internet infrastructure, human resource training, it is imperative to speed up creating and perfectionating the legal framework on this field.

The Law on E-Transactions was passed by the National Assembly (Legislature XI), at its 8th Session, on 29 November 2005, and entered into effect on 1 March 2006. The legislation consists of eight chapters, containing 54 articles that prescribe data-based messages, e-signature, certification of e-signature, communication and implementation of e-contracts, e-transaction by state agencies, security, safety, protection and confidentiality in e-transactions, settlement of disputes and remedies where violations in e-transactions occur.

The 2005 Law on E-Transactions governs all legitimate transactions conducted through electronic means. However, the legal document only provides electronic forms of these transactions (conditions, ways for transactions undertaken through electronic means to be legally recognized as those conducted by conventional measures); substantive contents of individual transactions shall be governed by sector-directed laws. Guided by such ideology, the law regulates e-transactions conducted by state agencies; in civil, business, commercial activities and others as specified by law.

Being formulated on the premise of the structure and contents of the Model Law on E-Commerce, which was adopted by the United Nations Committee for International Commerce Law, the 2005 Law on E-Transaction accepts data-based messages, which are authentic like the original documents and can be used as evidence where disputes arise. The Law also recognizes e-contracts and

different types of announcements presented in form of data-based messages.

The 2005 Law on E-Transactions stresses the principle of voluntariness, self-negotiation for selecting technologies; neutrality in technology usage, to ensure equality and security in e-transactions.

E-signature is a very crucial content enunciated in the Law on E-Transaction. The Law recognizes legal validity of an e-signature; specifies duties of signatories, of the party that accepts e-signatures, and organizations providing e-signature certifying services.

Particularly, the Law on E-Transaction 2005 has one separate chapter (Chapter IV) containing some provisions on e-contracts, such as: Definition of e-contracts (Art. 33); recognition of legal validity of e-contracts (Art. 34); principles of negotiation and implementation of e-contracts (Art. 35); negotiation and signing of e-contracts (Art.36); receiving, sending, timing, places where data-based messages are received and sent out in negotiating and implementing e-contracts (Art.37); legal validity of a notice in entering into and executing e-contracts (Art. 38). Though not being stated expressly in detail and concrete, but these are fundamental and foundational provisions regulating e-transaction activities. With these provisions, one can confirm that the 2005 Law on E-Transaction is the framework law designed to govern aforementioned e-transaction activities. Bearing on this framework law, numerous bylaws are to be adopted in

order to provide guidelines and details to translate provisions enunciated in the 2005 Law into reality.

The Law on E-Transaction inevitably lays the first bricks for setting up a broad system of legal normative documents on e-transaction in Vietnam, advancing to the installment of a comprehensive system of policy-legal framework for e-transactions in all fields of the social life, ranging from administrative, civil to business and commercial transactions. It is important that some of the concepts in the Law [on E-Transaction], like "data message" and "electronic certificate" have been incorporated and used in essential legal normative documents of the existing legal system. Being drafted in parallel with the Law on E-Transaction, the 2005 Civil Code and the 2005 Business Law insert provisions recognizing legal validity of data messages in their texts with regard to civil and commercial transactions (para.1, Art.124 of the 2005 Civil Code; Art.15 of the 2005 Business Law).

Following the 2005 Law on E-Transaction, the Law on Information Technology was adopted in 2006, establishing the fundamental legal foundation for boosting e-transaction. Chapter 2 (Application of Information Technology) and Chapter 4 (Measures for ensuring the application and development of information technology) in the Law on Information Technology contain provisions directly relating to the application of information technology in commercial activities and other areas of the social life. With regard to the

application of information technology in trading, the 2006 Law on Information Technology reserves one section (Section 3, Chapter 2) prescribing: the principle in applying information technology in trading (Art.29); sale electronic board (Art.30); information supply for entering into contracts online (Art.31); remedies for mis-entry of commercial information online (Art.32); and, online payment (Art.33).

Following the adoption of the Law on E-Transaction and the Law on Information Technology in 2005 and 2006 respectively, a series of bylaws were passed in order to provide detailed guidelines for the conduct of e-transactions in all walks of life. These bylaws, to name a few, include:

- Decree No.57/2006/ND-CP, promulgated on 9 June 2006, on e-transaction (the first decree of this kind to guide the execution of the Law on E-Transaction) recognizes e-certificates having equal legal validity with traditional certificates in all commerce activities, from goods offer, acceptance of offer, entry into contract, to execution of contract. The Decree lays a legal framework as a guarantee for actors to enter into e-contract, to protect the rights and legitimate interests of related parties; at the same time, to be the legal basis for opening trials related to disputes over e-contracts.
- Circular No.09/2008/TT-BCT, dated 21 July 2008, guiding the Decree No.57/2006/ND-CP on providing information and entry into contract on e-commerce website. The Circular is prepared to establish universal principles

and standards for e-commerce websites, to improve transparency of the transaction environment, and to protect and strike the balance of interests of involved parties. The core contents of the legal document include provisions on entry into contract procedures on e-commerce websites, starting with the time of entry and legal validity of the contract committed through online order; general principles and peculiar provisions on providing information about articles in the contract. Additionally, the Circular also prescribes in detail regimes to protect interests of online customers, such as the review and certification of contract articles, procedures to terminate the contract; settlement of disputes, and duties to protect personal information of customers on e-commerce websites.

- Decree No.26/2007/ND-CP of 15 February 2007 providing in detail the implementation of the Law on E-Transaction, with a focus on digital signature and service to certify e-signature. The Decree specifies digital signature (type of electronic signature permitted to affirm the acceptance of signatories of message contents; at the same time, to certify the integrity of data message at the time of signing) and other essential contents pertaining to the use of digital signature, including digital certification and the management, provision and use of service to certify digital signature. These are foundational provisions for possible establishment of a mechanism to ensure security, safety as well as reliability of e-transactions, exaggerating robust development of entry into e-contract.

- Decree No.27/2007/ND-CP of 23 February 2007 prescribing in detail the implementation of the Law on E-Transaction with regard to e-transaction in financial activities. The Decree was adopted to guarantee necessary conditions for the formulation and development of an environment for secure and effective e-transactions, helping the Government to administer e-transaction in financial activities, reducing to the minimum bad effects arise in e-transactions such as tax evasion, fraud in writing receipts and certificates; at the same time, to facilitate reforms of the finance sector on the platform of information technology application.

- Decree No.35/2007/ND-CP of 8 March 2007 on e-transaction in banking activity is the third consecutive legal document of this kind adopted in 2007, providing guidelines for implementation of the Law on E-Transactions in relation to concrete banking activities. The purpose of the decree is to ensure necessary conditions of a legal environment to strengthen, develop safe and effective e-transaction in the banking sector.

- Decree No.64/2007/ND-CP of 10 April 2007 on IT application in state agencies. This is a document providing guidelines for both the Law on E-Transaction, and the Law on Information Technology. That is why it has a rather broad scope, including construction of IT infrastructure, investment in IT application, and state agencies's performance on webpage environment. This decree contains principle provisions with a view to boosting e-transaction in

the public administration sector. Rules on provision, receipt of information on webpage environment, connection and sharing digital information, increased use of e-documents, securing access to information and exploiting public administrative service that would in turn contribute to speeding up administration reforms, transparentizing transaction environment, enhancing online provision of public services and promoting development of e-transaction.

Coincident with swift expansion of the volume of citizens and mobile phone users in Vietnam, varied forms of advertisement by electronic means such as email, message, online newspapers are becoming more popular. Advantage of these tools is high speed, cheap, effective interactability, and broad coverage. However, advertising via text message and/or email if not properly controlled would cause adverse effects, such as intrusion into privacy of customers and reduction of productivity of the whole information system. This reality poses a quest for a legal framework prescribing advertising activities on electronic devices, making it favorable for enterprises to make use of this advertising channel, but also to protect legitimate rights of consumers in accessing to goods advertisements. Hence, on 13 August 2008, the Government passed the Decree No.90/2008/ND-CP concretizing prohibitions of junk mails as enunciated in the Law on Information Technology.

- In 2008, the Decree No.97/2008/ND-CP on management, provision, use of internet service and information on

internet was approved by the Government, superceding the Decree No.55/2001/ND-CP, marking a new step forward in creating a gone-through and clear environment for e-transaction application in Vietnam. The biggest progress of the Decree No.97/2008/ND-CP is the simplification of rules on lisencing webpages, such as online newspapers, general electronic boards, and online websites with social network service.

The adoption of the Decree No.97/2008/ND-CP, though being late, is a positive step in improving the legal environment for internet in general and e-transaction application in particular in Vietnam.

- On 10 April 2007, the Government promulgated Decree No.63/2007/NF-CP on administrative penalties in the field of information technology. The Decree specifies violations, type and penalties as well as authority to impose administrative authorities in information technology application and development. Administrative violations in the field of information technology are defined in this Decree as acts of organizations and/or individuals intentionally or unintentionally infringe on legal provisions on state management over information technology, but not yet amount to be a crime and only subjected to administrative penalties (para.2, Art. 1).

In response to increasing extent of high-tech crimes when internet is becoming more popular in Vietnma, on 19 June 2009, the National Assembly passed the Law on some Amended and Supplemented Articles in the Penal

Code 1999. The revision of the Code this time concentrated on types of crimes in the field of information technology with a view to loosening the ties and associated difficulties in preventing and combating these crimes. Before 1 January 2010, the date of entry into force for the Law on some Amended and Supplemented Articles of the Penal Code 1999, provisions enunciated in the existing Penal Code, which had layed the legal foundation for handling online criminal acts, appeared to be outdated with developments in the social life. They were appreciated to have partial contribution to determining "crime" only, but not to identifying "penalty frame" applicable to criminal acts in this field. Thus, investigation and judicial agencies had encountered difficulties in dealing with crimes, even when the offenders and violations were clearly defined.

The approval by the National Assembly of the Law on some Amended and Supplemented Articles in the Penal Code 1999 marks a wide step taken by concerned authorities in an attempt to create a set of sanctions that are more comprehensive and stricter towards IT-related crimes, contributing to constructing a safe, healthy environment for e-transaction in general and e-commerce in particular. Subjected subjected to revision include Articles 224, 225 and 226 in the Penal Code 1999. The revision aims at broaderning the governed scope, from a computer network solely to included telecommunication network, internet and digital devices.

The Law also specifies in detail and

enlarge the penalty frame applicable to crimes, including those are charged on spreading virus; preventing or harassing operation of computer, telecommunication networks and digital devices; imparting or illegally using information from the computer and telecommunication networks. Penalties on all kinds of crimes are more severe. Criminal acts are also detailed and categorized in line with their seriousness for application of compatible penalties.

More particularly, the Law on some Amended and Supplemented Articles in the Penal Code 1999 has some detailed criminal acts included in, such as "buying, selling, exchanging, donating, giving, repairing, changing or publicizing confidential but legal information of agencies, organizations and other individuals on a computer networkd, telecommunication network, internet, without permission from the owner(s)". This explicitly indicates initially attention drawn by legal enforcement agencies to private information protection in the context of increasingly expanded e-transaction activities.

Notwithstanding to improved old rules, the Law is also supplemented with two new crimes in the field of information technology, namely "crime of illegally accessing to computer network, telecommunication network, internet and digital devices owned by other persons", and "crime of using computer network, telecommunication network and/or digital devices to appropriate

property owned by others". The inclusion of these two crimes is aimed at dealing with some prevailing types of crimes in the past time, especially the withdrawal of money owned by others from ATM machines.

The new provisions set forth in the Law on some Amended and Supplemented Articles in the Penal Code 1999 show obviously concerns of the society on the most well-detected crime patterns in the past time. Nevertheless, that information technology is a rapidly developing sector and keeps changing, leads to recurring emergence of new types of crime that are not yet prescribed in the effective law. Hence, there are many more maybe matters where further research should be undertaken for the next revision and supplementation in a broader and more comprehensive manner.

In sum, after the Law on E-Transaction 2005 and the Law on Information Technology 2006 adopted, seven guiding decrees were respectively promulgated from between 2006-2008, shaping basically a legal framework on information technology application and e-transaction in Vietnam.

The existing legal framework on e-transaction in Vietnam is formulated on two major pillars, the Law on E-Transaction 2005 and the Law on Information Technology 2006. Combining them together, the two laws govern relatively, but comprehensively essential aspects related to information technology as well as e-transactions in economic, social activities in Vietnam.

II. Consumating the legal framework on e-transaction in Vietnam

Having studied, evaluated the legislation on e-transaction in Vietnam over the past time, it is likely to confirm achievements recorded that are undeniable. However, apart from positive aspects, it is frankly acknowledgeable that it is a new, constantly changing and swiftly developing issue subjected to impacts of technology, it is certain that the legal framework related to e-transaction still needs further study in order to either promulgate new legal documents or to revise, supplement existing laws in order to make law-building more effective, promoting e-transaction in the social life. Initial studies have shown that:

First, with regard to the recognition of legal validity of e-certificate: it is recommendable to revise, supplement and/or newly promulgate legal normative documents in order to ensure legal validity of e-certificate in business activities, especially legal normative documents in the financial, investment, import and export fields.

Second, concerning legal normative documents on sectors or services involved in e-commerce: it is important to review, revise, supplement and convert sectors, business crafts in the business registration list into e-commerce with a separate registration code.

Third, for legal normative documents on taxation:

- take stock of, revise, supplement and/or newly issue legal normative

documents providing preference to value-added tax and enterprise income tax in order to set up an enabling environment for enterprises involved in e-commerce and to encourage consumers to buy goods online;

- Review, revise and supplement rules on products code and custom tariff value for the import and export of digitalized products in compliance with international practices and Vietnam's international commitments.

Fourth, concerning the protection of consumers: it is critically crucial to promulgate protectives for consumers and to ensure that consumers who get involved in e-commerce shall be protected by the law in line with international standards as in traditional commercial transactions.

Fifth, with regard to the management of e-commerce websites: it is necessary to promulgate, revise, supplement rules on e-transaction website registration, management in order to create a transparent and fairly competitive business environment.

Sixth, pertaining the issue of information security:

- promulgate legal normative documents on information security in e-transaction;
- issue legal normative documents on the protection of private information in compliance with relevant laws; private information in e-transaction must be protected by the law in line with international standards and Vietnam's international commitments.

Seventh, concerning settlement of disputes and legal violations in e-

transaction:

- Review, revise, supplement, and/or newly issue legal normative documents specifying legal value as evidence of e-certificate in handling any dispute that come up in e-transaction.

- Supplement and detail sanctions against violations of e-commerce law; authority and mechanism for inspection, checking and handling violations in e-commerce administration of state management agencies;

- Review, supplement crimes in the field of high-technology and e-transactions to the Penal Code.

Finally, with regard to some other issues: review, supplement, revise legal normative documents on intellectual property rights in compliance with international practices; on encouraging online business services; on online payment modes in order to facilitate e-commerce development. It is also recommendable that further studies need to be conducted in order to promulgate

legal normative documents aimed at governing issues arising in e-commerce activities.

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