

# Regulations on Digital Signatures in Vietnam

Vietnam has emerged as one of the key players in the South-East Asian digital revolution, having placed a strong emphasis on developing its digital economy in the next five years. Digital signatures are one of many digital tools being used to facilitate further domestic and foreign participation in the country's digital economy and reducing administrative burden. This article highlights some legal aspects of using digital signatures in Vietnam.

## I. Digital Signatures

While overlapping in many cases, there are differences between electronic signatures and digital signatures.

E-signatures broadly includes signatures that (i) are established in the form of words, letters, numerals, symbols, sounds or other forms by electronic means; (ii) are logically attached or associated with a data message; and (iii) are capable of certifying the person who signs the data message as well as the consent of such person to the content of the signed data message.<sup>1</sup> Examples of e-signatures include scanned image signatures, voice signatures, biometric hand-signatures, etc.

Digital signatures, on the other hand, are a subset of e-signatures that are created by the transformation of a document or message using an asymmetric cryptosystem. An asymmetric cryptosystem creates a key pairing which consists of a private key and a public key. The private key encrypts the digital signature while the public key verifies the digital signature generated by the private key.<sup>2</sup> Unlike e-signatures, digital signatures can provide an additional level of security, as their use also requires the signor to first obtain a digital signature certificate from a licensed digital signature authentication service provider, which contains the public key and links the user's identity to the signature.<sup>3</sup> The private key is held exclusively by the signor, thus ensuring that the ability to authenticate the signor's identity.

<sup>1</sup> Article 21, Law on E-transactions No. 51/2005/QH11 promulgated by the National Assembly on 29 November 2005 ("Law on E-transaction").

<sup>2</sup> Article 3.2, 3.3, 3.4, 3.6 of Decree No. 130/2018/ND-CP on Guidelines for the Law on E-transactions of Digital Signatures and Digital Signature Authentication issued by the Government on 27 September 2018 ("Decree 130").

<sup>3</sup> Article 3.7 and 5.5 of Decree 130.

Organizations providing certification services will create and/or certify the authenticity of the digital signature by generating a digital certificate that can be made available to the signor along with its private key in a USB token or via a network. Some certification authorities such as Viettel and VNPT also offer SIM digital signatures, whereby the private key is stored on a mobile SIM card. In February 2021, MISA, an accounting software developer, launched the first downloadable Vietnamese eSign application for smartphones, which bypasses the need for a carrier for the digital signature and further demonstrates the initiative to develop the infrastructure and adopt digital signatures in Vietnam.

## II. Validity of Digital Signatures

Decree 130/2018/ND-CP is the main legal authority governing the regulation and creation of digital signatures. Decree 130 recognizes the validity of digital signatures and stipulates that a document can be digitally signed in place of a wet signature and stamp, so long as the digital signature is secured.

A digital signature is considered secure if it satisfies the following conditions:<sup>1</sup>

1. It is created while the digital certificate is valid and it is verifiable by the public key contained in the digital certificate;
2. It is created using a private key corresponding to the public key contained in the digital certificate; and
3. The private key is under the exclusive control of the signer at the time of signing.

## III. Obtaining Digital Signatures

Under current regulations, all valid domestic digital certificates must be generated by licensed or approved certification authorities. Enterprises or individuals must apply to a certification authority to obtain digital certificates and private keys. Under Decree 130, there are four types of certification authorities:

1. The National Certification Authority (Vietnam National Root Certification Authority);
2. The Governmental Specialized Certification

Authority (Vietnam Government Certification Authority);

3. The Specialized Certification Authority of Qualified Agencies and Organizations; and
4. Public Certification Authorities.

Depending on whether the digital signature will be used in a cross-border capacity and whether the users are domestic or foreign individuals or organizations, some users are permitted to use digital certificates provided by foreign certification authorities.

Users of digital signatures in the private sector, which commonly include employees in management roles, generally apply for digital certificates from Public Certification Authorities. Public Certification Authorities are licensed companies that provide certification services. Presently, the Ministry of Information and Communication has licensed 16 Public Certification Authorities in Vietnam, including VNPT-CA, CA2, BKAV-CA, VIETTEL-CA, FPT-CA, NEWTEL-CA, SAFE-CA, Smartsign, EFY-CA, TrustCA, MISA-CA, CMC-CA, NC-CA, LCS-CA, EASYCA, FASTCA.

## IV. Exceptions to Digital Signatures

While digital signatures are generally permitted for use under Vietnamese law, there are several cases where digital signatures are not legally valid when used for certain types of contracts and documents. These cases usually involve specific processes and workflows, such as the notarization of documents. Specifically, Vietnamese notarization procedures require the signing of contracts/documents in front of notaries by wet signature.

Other examples include agreements for land, housing and real estate transactions, matrimonial property regimes, auction documents, powers of attorney to file for appeals in civil proceedings, and specific types of wills that cannot be digitally signed as they also require notarization.

State authorities are working to improve the legal framework and mechanism to accommodate the above processes.

<sup>1</sup> Article 9 of Decree 130.

## V. Corporate Considerations

Where enterprises wish to use digital signatures as a form of corporate seal, the Law on E-Transactions permits such use so long as the digital signature satisfies the requirements of Decree 130. This has recently been explicitly stated in Article 43.1 of the Law on Enterprise 2020.<sup>1</sup>

More commonly, enterprises use digital signatures in consumer agreements including sales terms, shipment documentation and purchase orders, commercial agreements such as sales agreements, distribution agreements, and NDAs. Enterprises also use digital signatures in administrative procedures such as filing tax returns and customs procedures, which are currently the most common uses of digital signatures in Vietnam. Digital signatures have been increasingly used in HR documents in the past five years, specifically for regular employment contracts, benefit paperwork, and privacy notices.

As more firms based in Vietnam transition the majority of their internal contracts and agreements from wet signature to digital signatures and modernize their internal processes and procedures, a more hospitable environment for foreign investors who

are moving their operations to Vietnam or taking advantage of new opportunities. The increased use of digital signatures by corporate entities symbolizes a positive shift towards modernization and efficiency, both in terms of internal affairs and ease of creating legally binding contracts and agreements.

While Vietnamese law recognizes the validity of digital signatures, some practical issues exist. Particularly, some governmental approvals and submission processes have yet to be updated to accommodate electronic submission. In these cases, there are a variety of procedures that still cannot be undertaken with digitally signed documents.

The while the core regulatory framework for digital signatures has been in place for several years, the growing digital signature service sector, and the increasing number of companies and firms incorporating digital signatures into their everyday commercial activities indicates that the use of digital signatures may soon be business as usual in Vietnam. As a result, Vietnam will likely see increases in efficiency and ease in both domestic and cross border business – a big step towards a desirable digital revolution.

<sup>1</sup> Law No. 59/2020/QH14 promulgated by the National Assembly on 17 June 2020.

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