

# New Law on Electronic Transactions

## Introduction

On 22 June 2023, the National Assembly passed the new Law on Electronic Transactions No. 20/2023/QH15 dated 22 June 2023 ("**LOET**"). The LOET will replace the currently effective Law on Electronic Transactions that was enacted in 2005. It will take effect from 1 July 2024.

## Key Features

Set out below is a high-level summary of the proposed provisions prescribed by the LOET.

### 1. Extended Scope of Application

Under the currently effective Law on Electronic Transactions, certain types of certificates (land use rights certificate, marriage registration certificate, etc.), bills of exchange and/or other valuable papers are excluded from the law's application.

The LOET removes these exclusions and as such, appears to be enacted with the view of being an omnibus legislation that covers electronic transactions in all sectors and for all types of contracts. The LOET focuses on using electronic means in transactions whose substances, conditions and forms will be governed by other specific laws.

### 2. Detailed Guidance on Electronic Signatures

The LOET now classifies electronic signatures ("**e-signatures**") based on their purposes or use, including (i) specialised e-signatures (used by specific organisations for their specialised activities); (ii) public digital signatures (used for public activities and guaranteed by public certificates; and (iii) specialised digital signatures for official use (state digital signature). In addition to the general requirements, each type of e-signature will be subject to a specific set of requirements to ensure its authenticity and reliability.

Notably, it appears unlikely that the LOET will recognise common forms of electronic confirmations that demonstrate stakeholders' consent or approval – for example, use of scans or images of wet signatures, one-time passwords or text messages, as forms of e-signature. The LOET envisages other legislation to establish legal grounds for such types of confirmation methods.

For completeness, the LOET amends, supplements and/or introduces new definitions for key terms such as "trust services", "timestamps", "e-contracts", "digital data", "master data", "e-environment", "e-certificate" and "digital signature certification service".

### **3. New Requirements for Recognising Foreign E-Signatures and Foreign E-Signature Certificates**

Foreign e-signatures and foreign e-signature certificates will be recognised if: (i) they conform to standards and technical regulations on e-signatures/e-signature certificates as prescribed by Vietnamese law, recognised international standards, or international agreements or treaties to which Vietnam is a signatory; and (ii) foreign e-signature certificates are formed based on fully authenticated identification information of foreign organisations and individuals.

Currently, it is unclear as to whether this recognition will take the form of a licence (as contemplated by the currently effective Law on Electronic Transactions). Further guidance from the Ministry of Information and Communications may be expected.

### **4. New Regulations on Information System Serving E-Transactions**

The LOET introduces the concept of "information systems serving e-transactions", i.e., a collection of hardware, software and databases established with the main function and feature of serving e-transactions, ensuring authenticity and reliability in electronic transactions. It categorises information systems serving e-transactions based on the following criteria: (i) information system administrators; (ii) functions and features; and (iii) scale and number of users in Vietnam or monthly access from users in Vietnam.

Notably, the LOET also introduces new regulations on "digital platform serving e-transactions" (i.e. an information system serving e-transactions which creates an electronic environment that allows parties to conduct transactions or to provide and use products, goods, and/or services or to use for the purpose of developing products services) and "intermediary digital platform serving e-transactions" (i.e. a digital platform serving e-transactions in which the administrator of such a platform is independent from relevant parties conducting the transaction) as regulated services.

Furthermore, the LOET sets out general obligations for the administrator of an information system serving e-transactions, and additional obligations for administrators of (i) large-scale intermediary digital platforms serving e-transactions and (ii) very large-scale intermediary digital platforms serving e-transactions. Such additional obligations include, among others, reporting to the Ministry of Information and Communications on an annual basis past incidents or incidents with signs and risks of the information system provided by them being abused to conduct acts that violate Vietnamese laws.

While the LOET imposes separate obligations on "large-scale" and "very large-scale" intermediary digital platforms, it does not regulate how such platforms are to be classified. The LOET envisages that the Government will issue further regulations on this subject.

Please feel free to reach out to our contact partners if you would like to find out more or require assistance in relation to this development.

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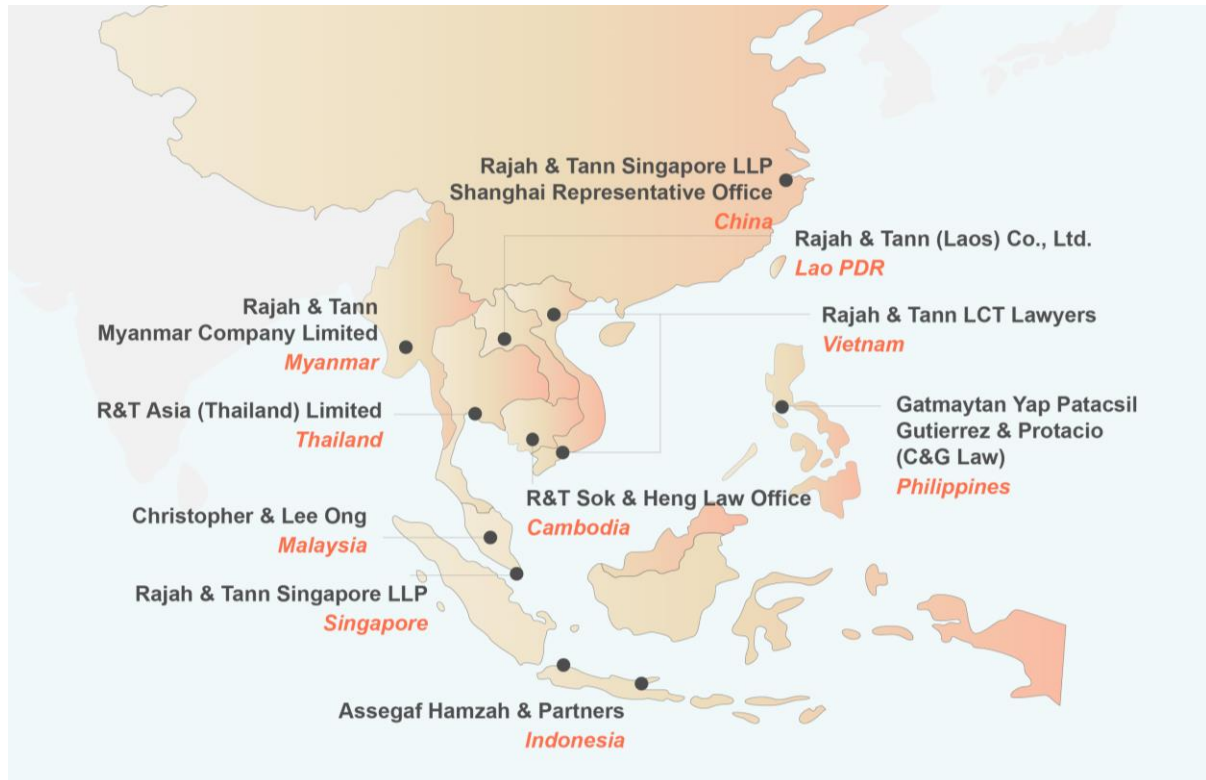
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