

**NEW ELECTRONIC TRANSACTION LAW -
HOW VIETNAMESE GOVERNMENT VOUCHES FOR DIGITAL TRANSFORMATION**

I – BACKGROUND

On July 17, 2023, the National Assembly issued Law No. 20/2023/QH15 (“**ET Law 2023**”) to replace Law No. 51/2005/QH11 (“**ET Law 2005**”) on Electronic Transactions. ET Law 2023 will take effect from July 1, 2024.

ET Law 2023 presents a major upgrade with a new set of definitions and a broader understanding of certain terms, while accommodating UNCITRAL model laws on Electronic Commerce (1996), Use and Cross-border Recognition of Identity Management and Trust Services (2022), Electronic Transferable Records (2017), and Electronic Signatures (2001). This reflects an effort to promote electronic transactions and hasten digital transformation.

II - SIGNIFICANT CHANGES OF LAW ON ELECTRONIC TRANSACTIONS 2023

No.	Classifications		Old provisions	New provisions and comments
1	General provisions	Scope of regulation	Not apply to distinctive written documents in terms of land matters, and identity proof. ET Law 2005 shall apply in case of differences of laws on the same matter related to e-transactions.	ET Law 2023 encompasses all transactions without specific contents, conditions, and transaction formats. Transactions in other areas of laws may also apply the regulations under ET Law 2023 unless such specialized laws restrict the application of electronic transactions.

		Subject of application	Agencies, organizations, and individuals opting for transactions by electronic means.	Under the new provision, a wider range of entities directly participating in e-transactions or involved in e-transactions are subject to ET Law 2023.
2	Definition	E-Certificates	An e-certificate means a data message issued by an e-signature certification service provider in order to verify that the certified agency, organization, or individual is the person having made the e-signature.	<p>ET Law 2023 provides a broader and more relevant definition of E-Certificate.</p> <ul style="list-style-type: none"> • About the scope: ET Law 2023 expands the scope of E-certificates, not only limited to certifying electronic signatures but including all types of licenses, certificates, certifications, or other written approvals. • About the issuer: Correspondingly, the issuer of e-certificates is also expanded to include all competent agencies or organizations instead of only e-signature certification service provider.
		Electronic data; Digital data; Master data	No provisions	<ul style="list-style-type: none"> • Electronic data means data generated, processed, and stored by electronic means. • Digital data means electronic data created by using digital signals.

				<ul style="list-style-type: none"> • Master data means the data containing the most basic information to describe a particular object, as a basis for reference and synchronization between different databases or data sets.
		Timestamp	No provisions	<p>ET Law 2023 provides a definition of timestamp, which means electronic data associated with a data message that allows the identification of the time that the data message existed at a particular time.</p> <p>Along with providing a definition of timestamps, the law also regulates time-stamping service as a type of trust services.</p> <p>Timestamps are used to prove and verify the existence of data at a certain point in time.</p> <p>Documents, records, and electronic messages when time-stamped will ensure non-repudiation of time and data integrity. The establishment of a definition of timestamps as well as regulations governing the timestamps service is a very necessary change, in line with practical needs, to</p>

			help enhance the security, storage permanence, and legality of electronic documents.
3	E-signature		In general, it is witnessed that the definition of E-Signatures in ET Law 2023 is more specific but has no significant change to ET Law 2005. The most noticeable change is that ET Law 2023 has classified E-signatures according to their purposes.
4	Digital signature		<p>Unlike the old law, ET Law 2023 has provided a definition of digital signatures which is a type of E-signature using an asymmetric key algorithm, consisting of a private key and a public key, in which the private key is used to digitally sign, and the public key is used to verify the signature. Along with that, ET Law 2023 no longer stipulates electronic signature certification in general, but only stipulates digital signature certification services. Accordingly, this is one of the types of trust services, which are specifically specified in Chapter III of ET Law 2023.</p> <p>E-signatures play an important role in the process of promoting e-transactions and digital transformation. Previously, the use of E-</p>

			signatures faced many difficulties, partly due to legal and policy limitations. Therefore, the application of ET Law 2023 with more detailed and appropriate regulations in accordance with the actual situation is expected to address challenges faced by organizations and individuals when using e-signature and enhance the convenience and safety of e-transactions.
5	Foreign E-Signature and Foreign E- signature certificate		Foreign e-signatures and foreign e-signature certificates will be recognized if they are provided by a foreign e-signature certification service provider (among other requirements). Such service providers, in order to be recognized, must themselves meet other criteria, including having a representative office in Vietnam.
6	E-contract	ET Law 2005 recognizes the legal validity of e-contracts and regulates: <ul style="list-style-type: none"> • signing and performance of e-contracts; • sending or receiving data messages in the 	ET Law 2023 provides a more flexible and innovative approach with new provisions that enable the signing and performance of e-contracts through automatic information systems.

		<p>signing and performance of e-contracts;</p> <ul style="list-style-type: none"> • legal validity of notice in signing and performance of e-contracts. 	
7	Trust services	No provisions	<p>In parallel with the adoption of Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services, the trust services' advent is swiftly integrated and regulated in the e-transaction legislation. Qualified trust service businesses are entitled to responsibly operate under 5 types of services. However, the responsibilities remain relatively vague and general, which raises the question of the necessity of decrees and by-laws guiding the application of these provisions.</p>
8	Data message		<p>Data messages can be created, automatically generated during transactions, or digitized from paper versions. If the information is required in writing, data messages shall satisfy such requirement provided such information is</p>

			<p>accessible and usable for reference. Moreover, in terms of notarization and certification, data messages can be legally acceptable given their compliance with relevant legislations.</p> <p>This represents an improvement compared to ET Law 2005. While ET Law 2005 does not promulgate the legality of scanned contracts or PDF contracts, ET Law 2023 forms a basis for confirming the legal validity of such contracts in the future following guiding documents of the law.</p>
9	Information systems serving e-transactions		<p>ET Law 2023 provides a new Chapter on information systems serving e-transactions. The Chapter regulates information systems serving e-transactions; e-transaction accounts; responsibilities of the manager of an information system serving e-transactions; and reporting, summarizing, and sharing data in service of state management of e-transactions.</p> <p>Notably, the Chapter moves the needle on transparency, as seen in provisions requiring very large-scale intermediary digital platforms to</p>

			<p>(i) publicize the general principles, parameters, or criteria used to make recommendations for displaying content and displaying advertisements to users; and (ii) allow users to opt out content and advertisement recommendations. As a result, personal information would be less likely to be prone to misuse and users would have more control of what is shown to them on digital platforms.</p>
10	Electronic trading accounts		<p>Agencies, organizations, and individuals are enabled to employ e-trading accounts in accordance with their needs.</p> <p>ET Law 2023 introduces new regulations aiming to secure the transmission of data which entail unique identification of entities, transaction time accuracy, and assurance of the information system in service of e-transactions with reference to regulations on cyberinformation security.</p> <p>Herein, the information system helps ensure the security of data messages throughout the process and to apply technical measures appropriate to laws.</p>

				ET Law 2023, likewise, specifies the responsibilities of the owner of an information system at the service of e-transactions, especially in providing and publicizing information in certain incidents.
11	E-transaction of State agencies	Shared database	No provisions	The term “shared database between state agencies” is also one of the significant updates under ET Law 2023. According to Article 40, databases shared in state agencies include national databases, databases of ministries, sectors, and localities. This provision sets a legal framework for state agencies to build a database that is synchronous, transparent, and convenient for management. This database provides data for all applications developed in government agencies to use together and paves the way for the formation of big data, building digital government.
		Open data of state agencies	No provisions	Open data stipulated in ET Law 2023 is defined as data that is widely publicized by a competent state agency for agencies, organizations, and individuals to freely use, reuse and share, to promote e-transactions, digital transformation,

				<p>development of the digital economy and digital society. The stipulations are immensely novel, acting as a steppingstone towards a large bank of open data in Vietnam.</p> <p>Besides, Chapter 5 of ET Law 2023 also contains new regulations on data management; create, collect data and connect and share data.</p>
12	State management of E-transactions		In ET Law 2005, there is no regulation on which state agency will have the authority to manage E- transactions.	New ET Law 2023 stipulates the responsibility to manage E-transactions of state agencies. The main responsibility is assigned to Ministry of Information and Communication. In addition, there is also the responsibility of the Ministry of Defense and the mutual coordination among other state agencies.