

Electronic execution of legal documents in Vietnam



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The COVID pandemic has in many ways turned the world upside-down. It has taught the world many painful lessons and forced us to re-examine many aspects of the way we live our lives. Evidently, there remains a long way to go before we're out of the woods and life can return to some vague semblance of normalcy.

For lawyers in Vietnam practising from home during the pandemic, one significant challenge that has been faced (among many others) is the extreme difficulty (or impossibility) of procuring the execution of contracts and other legal documents in the traditional Vietnamese manner (*the Traditional Execution Method*) involving:

- (i) the printing of one full physical original for each signatory party;
- (ii) the application of “wet ink” signatures by each signatory party to each full physical original (including the legal representatives of any signatories being companies);
- (iii) the “cross-chopping” of each full physical original with at least one corporate seal (by applying the corporate seal across the right-hand edge of each page, with the pages fanned out such that a small portion of the seal appears on the right-hand edge of every page) (*Cross-Chopping*); and
- (iv) the delivery of one fully executed physical original to every signatory party.

During the pandemic lockdown restrictions, legal professionals from numerous key jurisdictions worldwide have posed the question to their colleagues in Vietnam: Why not just use DocuSign to get the documents executed? DocuSign is the international leader in electronic document execution platforms and in many jurisdictions worldwide is universally accepted as being a valid, lawful, robust, and secure means of procuring the binding execution of legal documents. In many jurisdictions worldwide, electronic platforms such as DocuSign are expressly recognised by law as being valid and lawful and binding parties who execute documents using them.

Despite the fact that Vietnam law does recognise electronic transactions, documents, and signatures, DocuSign is not regarded as being an acceptable method of document execution in Vietnam and the Traditional Execution Method continues to be almost universally insisted upon by contracting parties and their professional advisors alike. The pandemic lockdown restrictions have brought sharply into focus the questions of why this continues to be the case and whether or not the time has come for concerted action to be taken to move Vietnam into the 21st Century in the matter of the execution of formal legal documents.

Although, from a technical “black letter” law perspective, it can be argued that the extremes of formality encapsulated by the Traditional Execution Method are not strictly necessary in order for parties to be bound and contracts to be signed, this degree of strict execution formality to this day remains absolutely standard in Vietnam. There is a number of reasons for this, key amongst which is that it is only by applying this level of extreme execution formality that it is possible to prove beyond doubt to a court, State authority, or arbitration tribunal that the contract (or other legal document) has, in fact, been duly and properly executed by each of the signatory parties and has not been fraudulently tampered with after execution.

It is also relatively clear that as a matter of technical “black letter” Vietnam law, the application of a corporate seal to a legal document is not necessary in order for a company to be bound. On the basis of the express provisions of Vietnam law, that the signature of the registered legal representative of the Company (or his or her duly appointed authorised representative) is ostensibly sufficient to bind a company, in the absence of any seal (unless the charter of the Company specifies otherwise).

Furthermore, electronic transactions and electronic signatures are, in fact, already recognised by the express provisions of the laws of Vietnam. Below is a brief summary of the current state of Vietnamese law as it applies to electronic transactions and electronic signatures.

E-signatures of legal documents are recognised under the Civil Code (2015), the Law on E-transactions (2005), and Decree 130/2018/ND-CP, provided that the e-signatures are secured and satisfy the conditions specified in Article 22.1 of the Law on E-transactions (2005), namely the following (*the Security Conditions*):

- (i) e-signature creation data are attached only to the signatory, in the context that such data are used;
- (ii) e-signature creation data are under the control of only the signatory, at the time of signing;
- (iii) all changes to the e-signature after the time of signing are detectable; and
- (iv) all changes to the contents of the data message after the time of signing are detectable.

Where an e-signature is certified by a duly licensed e-signature certification service-providing organisation in Vietnam (*an ES Certifier Company*), by way of issuance of an e-certificate (*an ES Certificate*), that e-signature will be deemed by Vietnam law to fulfil the Security Conditions.

Except as specified otherwise in the express provisions of the laws of Vietnam, the use by contracting parties of e-signatures and the choice of ES Certifier Company are subject to agreement among the contracting parties.

In relation to any documents to be submitted to any Vietnamese State authorities (including courts) or documents that require notarisation in order to be valid, “wet ink” originals are necessary (except where any State authority expressly authorises and facilitates the use of e-signatures, which has already happened in some cases).

Where a document is not to be executed by or submitted to any State authority and does not require notarisation in order to be valid, the parties to that document are free to agree upon the use of e-signatures, provided that the e-signatures must satisfy the Security Conditions.

Each signatory party is responsible to verify the legal validity of each other signatory party’s e-signature, which is the key reason why ES Certificates are important. Each signatory party is also responsible to verify the validity and scope of each other signatory party’s ES Certificate, which is why ES Certificates issued by duly licensed and Vietnam-domiciled EC Certifier Companies are important.

The Ministry of Information and Communications (*the MIC*) publishes on its website a list of the ES Certifier Companies who have been duly licensed by the MIC. As at the date of this publication there are 12 duly licensed ES Certifier Companies, all of which are domestic Vietnamese companies and none of which is an internationally recognised e-signature platform provider such as DocuSign.

DocuSign is clearly the international leader in electronic document execution technology and is widely recognised and commonly used worldwide. There can be little doubt that if contracting parties in Vietnam could use DocuSign in the same way that parties in many jurisdictions worldwide have been doing successfully for some time, this would materially enhance Vietnam's reputation amongst the foreign investor and legal professional communities and make investing in Vietnam a significantly more efficient, timely, and satisfying experience.

Perhaps the time has come for some tough questions to be asked in Vietnam. What value do corporate seals really add? Do physical "wet ink" documents really enhance security or fraud prevention? Why are the strict rules regarding ES Certificates issued by ES Certifier Companies and MIC registration necessary? Why is Vietnam amongst the few jurisdictions worldwide in which DocuSign cannot be freely and confidently used by contracting and other signatory parties?

Internationally recognised e-signature platforms such as DocuSign are exceedingly robust, from a security and fraud-prevention perspective. It is difficult to justify any argument to the effect that a traditionally "wet ink" signed, sealed, and "cross-chopped" physical document provides any materially higher degree of security and fraud-prevention, as compared with an electronic document, electronically executed via DocuSign.

Vietnam has laws dealing with electronic documents and electronic signatures, but to date they have been of little practical assistance to contracting parties or their professional advisors. The risks associated with departure from the Traditional Execution Method continue to be perceived as being unacceptably high and platforms such as DocuSign cannot be used in Vietnam with any degree of confidence.

Having regard to the experience of the pandemic lockdowns, perhaps the time has come for specific legislation to be issued in Vietnam, to establish or clarify the following principles in clear and unequivocal terms:

- (1) Corporate seals do not need to be applied to any document (whether or not a contract) in order for the executing company to be bound.
- (2) The signature of a company's registered legal representative or his or her duly appointed authorised representative is sufficient to bind a company, without any seal being applied.
- (3) Contracts and other documents may be executed and exchanged electronically, including by way of electronic signature technology such as DocuSign (with MIC registration and the issuance of ES Certificates not being necessary).

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- (4) Signatory parties are free to agree upon the electronic platform to be used (and such agreement is all that is required in order for the use of that platform to be legally effective and to bind the parties).
- (5) Documents (whether physical or electronic) do not need to be initialled on every page or have anything akin to “cross-chopping” implemented in relation to them, in order to be legally binding or enforceable.
- (6) Physical, “wet ink” hard copies of documents are not necessary, in order to be recognised by State authorities, courts, tribunals, or banks.
- (7) State authorities, courts, tribunals, and banks may (and should) rely on electronic documents (having been electronically executed) as being valid, binding, and enforceable.

The COVID lockdowns have demonstrated in clear and compelling terms that electronic signature platforms are extremely beneficial to the efficient and timely conduct of business in the modern world. Vietnam would be well-served in enhancing its reputation as a highly desirable foreign investment destination by modernising the manner in which contracts and other legal documents are executed in Vietnam.

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