

Legal news

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Trade Law

E-commerce enters a new domain

By Nguyen Tran Tuyen, Attorney at law

The law on electronic transactions, which includes eight chapters and 54 articles is quickly leaving its mark.

The law, which was passed on November 29, 2005 and became effective as of March 1, 2006, sets legal foundation for development of e-commerce activities and all electronic transactions while protecting the rights and legitimate interests of organisations and individuals in the use thereof. In addition, the law utilises advances in information technology, such as e-mail, to speed up the government's administrative reforms and to meet WTO obligations in order to achieve the country's goal to accede the global trade body by the end of 2006.

Recognition of the legal validity of data messages is the most important aspect of the law on electronic transactions. Accordingly, the validity of information contained within data messages (that is created, sent, received, and/or stored by electronic means) shall not be denied because of its electronic form.

A data message has the same legal validity as an ordinary paper document, provided that the information contained therein is accessible and usable for reference. Furthermore, a data message shall be treated as the original if its content is complete, accessible and usable. These provisions are considered as the legal cornerstone for protection of electronic transactions and e-commerce activities.

The law also recognises that a data message cannot be refused as legal evidence due to its data status. Such a provision is of special significance to financial and banking transactions. For the cyber-literate, the use of electronic transactions can save a great deal of time and money, while lawyers can now have an additional, effective means of collecting evidence for hearings.

The forms of data message recognised by the law include, but are not limited to, electronic transfers, electronic bills, electronic mail, telegrammes, telegraphy, and facsimiles. However, the legal status of some data messages is still in question. For example, whether an SMS message sent and received by cell phone via GSM network can be considered a data message - and therefore protected by laws - is expected to be clarified in the guiding regulations to implement the law.

Under the law, the legal validity of a contract must be recognised if it is expressed in a data message form. During negotiation, signing and implementation of contracts, all notices in the form of data message have the same legal validity as a hardcopy notice. The signing and implementation of an electronic contract must strictly comply with provisions of this law, and laws on contracts. Accordingly, civil transactions via electronic means in the form of data messages shall be legally considered transactions in writing. The law is therefore a tool to protect the lawful interests of organisations, individuals, State and public by protection of contracts signed by electronic means.

Electronic signatures may exist in the data form of a word, letter, number, symbol, sound or other forms logically associated or attached to electronic information.

The security of an electronic signature must be ensured. An electronic signature is deemed to be secured if it can be verified by a testing procedure agreed by all parties involved in a given transaction. If a transaction made in writing is required to have a signature or a seal of the entities affixed, and if such kind of transaction is made and implemented in electronic form, for its validity, the electronic signature must meet all conditions stipulated under the law. The government shall issue detailed regulations on the establishment and operation of organisations providing certification of electronic signatures.

The law on electronic transactions has been passed after a two-year drafting process. This period is considered short when dealing with such a new and specialised field, but demonstrates the need for urgency in development of business activities prior to Vietnam's WTO accession. As with many other laws, the law provides only general provisions that cannot be implemented without the subordinate implementing regulations and guidelines.

However, to date, there has only been one guiding decree for e-commerce enacted of the five expected, namely the e-commerce, e-commerce in banking, e-commerce in finance, digital signatures and certification of digital signatures, electronic transactions for State bodies. At present, the implementation of the law, as well as its significance and impact on business activities are still limited. However, it cannot be denied that with about more than eight million internet subscribers, and millions of individuals who use the internet, the law is considered to be of great importance, with deep influence in social and economic activities.

Other Sectors

Finance

- The Ministry of Finance issued Circular 96/2006/TT-BTC, on October 16, 2006, guiding the collecting level, regime of collection, payment, management and use of auction fee.

Banking

- On September 28, 2006, the State Bank of Vietnam issued Decision 1879/QD-NHNN, on the approval of implementation plan of the Project on the development of Vietnam banking to 2010 and orientation to 2020.

Trading

- On September 28, 2006, the Ministry of Trade issued Circular 11/2006/TT-BTM, guiding the implementation of Decree 72/2006/ND-CP, on the Representative office, branch of foreign trader in Vietnam.

Investment

- The Government issued Decree 101/2006/ND-CP, on September 21, 2006, regulating the re-registration, conversion and changing registration of investment certificates of foreign-invested enterprises.
- Government's Decree 108/2006/ND-CP, dated September 22, 2006, with detailed regulations and guiding the implementation of a number of articles of the Law on Investment.
- Circular 03/2006/TT-BKHDT, dated October 19, 2006, of the Ministry of Planning and Investment, guiding the documents, sequence, procedures of business registration according to Decree 88/2006/ND-CP.
- At the same day of October 19, 2006, the Ministry of Planning and Investment, issued Decision 1088/2006/QD-BKHDT on the promulgation of the standard forms to implement the investment procedures in Vietnam.

As these are important legal documents concerning investment, should you interest in the full text of any of these documents, please do not hesitate to contact us via the hereunder:

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Intellectual Property

- Government's Decree 100/2006/ND-CP, dated September 21, 2006, with detailed regulation and guiding the implementation of a number of articles of Civil Code, Intellectual Property Law on copyright and related rights.
- On September 22, 2006, the Government stipulated Decree 103/2006/ND-CP, with detailed regulation and guiding the implementation of Intellectual Property Law.
- On the same day, the Government promulgated Decree 106/2006/ND-CP, dealing with administrative violations in the field of industrial property.

Construction

- The Government issued Decree 111/2006/ND-CP, on September 29, 2006, guiding the implementation of the Law on Bidding and choosing of construction contractor according to the Law on Construction No.16/2006/QH11.
- On the same day, the Government stipulated Decree 112/2006/ND-CP, on amendment of and supplementation to a number of articles of Decree 16/2006/ND-CP, on the management of construction investment project.

Miscellaneous

- On October 06, 2006, the Prime Minister issued Decision 224/2006/QĐ-TTg, promulgating the Regulation on supervision and evaluation of operation effect of State enterprises.
- On October 12, 2006, the Ministry of Finance issued Circular 95/2006/TT-BTC, on amendment of and supplementation to Circular 126/2004/TT-BTC, dated December 24, 2004 of the Ministry of Finance, guiding the implementation of Government's Decree 187/2004/ND-CP, dated November 16, 2004, on conversion of State enterprises into joint-stock companies.
- The Prime Minister issued Directive 35/2006/CT-TTg, on October 13, 2006, on executing the implementation of Law on legal assistance.
- Decision 236/2006/QĐ-TTg, dated October 23, 2006, of the Prime Minister, on the approval of the development plan of medium and small sized enterprises for the period of 5 years (2006-2010).
- On October 23, 2006, the Government promulgated Decree 121/2006/ND-CP, on amendment of and supplementation to a number of articles of Government's Decree 116/2003/ND-CP, dated October 10, 2003, on recruitment, use and management of officers in State professional units.

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