Asia Pacific Guide to Lending and Taking Security - Vietnam

Working digitally

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# 1. Is it possible for documents to be executed electronically (whether by the manual insertion of a digital signature or the use of an e-signing platform) under the laws of this jurisdiction? If so, is this limited to only particular types of finance documents?

Loan agreements can be made in the form of electronic data messages (i.e., in the form of electronic data exchange, electronic documents, electronic mail, telegram, telegraph, fax or other similar forms). Vietnamese law also provides certain legal frameworks for the parties to execute transactions electronically, for example, via the internet and, signing documents with electronic signatures (e-signatures) in lieu of prevalent wet-ink signatures.

An e-signature is: (a) created in the form of words, letters, numbers, symbols, sounds or other forms by electronic means; (b) logically associated or incorporated with electronic contracts (e.g., in the form of common PDF or Word files); and (c) capable of certifying the signatory and their approval of the content of the signed electronic contract. There are three common forms of e-signature:

Scanned signature: a signatory of each party signs a hard copy of a document in wet ink; then, the document with the signatures is converted into electronic form by scanning and is sent to the counterparty by email.

Image signature: a signatory inserts an image of their signature into the signature box of an electronic file of a document; then, the file including the image signature is sent to the counterparty by email.

Digital signature: parties use a specialized platform and device provided by a digital signature authentication service provider to create digital signatures; then, such digital signature is attached to an electronic file of a document to be signed.

Not all e-signatures have equal legal validity to pen-and-paper signatures. Equal validity for an e-signature is only legally recognized if the e-signature in question satisfies the following requirements:

The method of creating the e-signature allows for the identification of the signatory and indicates their consent to the contents of the contract/agreement.

Such method is sufficiently reliable and appropriate for the purpose for which the contract/agreement was originated and sent.

However, there has been no further official implementation guidance or clarifications of these requirements. A digital signature is officially recognized as a type of e-signature. Documents signed by digital signature do not require stamps and do not give rise to the validity issue. In practice, due to the higher level of security it offers in comparison to other forms of e-signatures, a digital signature that has been certified by a licensed certificate authority in Vietnam is legally considered a secured e-signature and it is more likely to be recognized by Vietnamese competent authorities and courts. However, although there have been a tremendous number of documents signed with signatures created through foreign digital signature services such as DocuSign or Adobe Sign, it is not certain whether such documents and signatures will be recognized as legally valid by the courts in the event of disputes.

In practice, for finance documents pertinent to loan or security interests that need to be registered with the competent authorities (e.g., long-term offshore facility/loan agreements), the authorities usually require such finance documents to be signed with wet-ink signatures and delivered in hard copies.

# 2. Where the witnessing of a signing is contemplated, is it possible for the witness to verify the signature over a live video call?

Depending on the types of documents, the physical presence of the signatory that executed the document will be required (e.g., real estate-related agreements such as mortgage agreements over assets attached to land). Except for limited cases where the entity is able to register its specimen signature at the notarial practice organization, the contract can be signed beforehand. However, a notary will compare the signature in the contract with the specimen signature before notarization.

According to the law, notarization requesters, witnesses and interpreters must sign the contracts in the presence of the notary. The law does not specifically say whether such presence can be virtual. Thus, it would likely be permissible for the notary to witness the execution by videoconference. However, parties should understand that the burden of proof falls on them when the execution is witnessed virtually.

# 3. Is it possible to register/perfect security electronically without wet ink signatures?

The competent authorities often require the applicant for security registration/enforcement to submit and present documents stamped and signed with wet-ink signatures.

# 4. Are there any other legal restrictions that may prevent the parties from executing a finance transaction electronically?

No.

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