



LAC DUY & ASSOCIATES

JULY 2024

NEWSLETTER



**HIGHLIGHTS OF NEW
PROVISIONS IN THE LAW ON
PROTECTION OF CONSUMER'S
RIGHTS 2023**




**DRAFT CASE LAW 16/2024/AL
ABOUT DETERMINING A CIVIL
DISPUTE OVER THE RECOVERY
OF PROPERTY**




**REMARKABLE CHANGES OF
THE LAW ON ELECTRONIC
TRANSACTIONS**

PUBLISHED BY LAC DUY & ASSOCIATES

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Dear Clients,

Lac Duy & Associates would like to send you the legal newsletter of July 2024 with some notable updates and articles as follows:

- Remarkable changes of The Law on electronic transactions
- Highlights of new provisions in The Law on protection of consumer's rights 2023
- Draft Case Law no. 16/2024 regarding the determination of the civil dispute over property reclaim
- Legal documents in 07/2024



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REMARKABLE CHANGES OF THE LAW ON ELECTRONIC TRANSACTIONS

On June 22, 2023, the National Assembly passed the Law on Electronic Transactions No. 20/2023/QH15. This Law replaces the Law on Electronic Transactions No. 51/2005/QH11 and takes effect from July 1, 2024, bringing a number of outstanding changes in the law on electronic transactions, creating favorable conditions for the digital transformation process.



1. Change the scope of regulation

Article 1 of the Law on Electronic Transactions 2005 limits the scope of regulation to only certain fields *"in the operations of state agencies; in the civil, business, commercial and other fields prescribed by law"*. The legal validity of an electronic transaction may be refused for recognition if there is no specific specialized legal provision affirming the legal validity of such transaction.

Currently, in order to expand the scope of regulation of the law on electronic transactions, Article 1 of the Law on Electronic Transactions 2023 stipulates: *"1. This Law provides for the implementation of transactions by electronic means. 2. This Law does not govern the contents, conditions and forms of transactions. 3. In case other laws stipulate or do not stipulate the*

implementation of transactions by electronic means, the provisions of this Law shall apply. In case where other laws contain provisions prohibiting the implementation of transactions by electronic means, the provisions of such laws shall be complied with." This regulation is the basis for the laws on many other fields to still take effect in the digital environment and be capable of governing the content and form of electronic transactions, which makes the legal validity of electronic transactions equivalent to traditional transactions.

2. Supplementing regulations on electronic signatures

The Law on Electronic Transactions 2023 supplements the definition of "electronic signature" in Article 3.11: *"An electronic signature is a signature created in the form of*

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electronic data attached to or logically combined with a data message to confirm the signatory and affirm his/her approval of the data message", thereby, the classification of electronic signatures includes 03 types according to Article 22.1: (i) Specialised electronic signatures (ensuring to meet the requirements in Article 22.2); (ii) Public digital signatures and (iii) Public duty-specialised digital signatures (ensuring to meet the requirements in Article 22.3).

Notably, the Law on Electronic Transactions 2023 has supplemented the regulations on recognition of foreign electronic signatures in Article 26, which facilitates demands of foreign organizations and individuals and Vietnamese organizations and individuals to transact electronically with foreign organizations and individuals and promotes cross-border electronic transactions.

In order to have a legal validity equivalent to a signature in a paper document, a specialised electronic signature must be certified for security. Previously, the security of electronic signatures only needed to be verified according to the process agreed upon by the parties to the transaction and to meet certain security conditions according to Article 22.1 of the Law on Electronic Transactions 2005. However, the current law has a stricter requirement that specialized electronic signatures need to be certified by the Ministry of Information and Communications for security.

The Law on Electronic Transactions 2023 also supplements the definition of "digital signature" in Article 3.12: *"an electronic signature using asymmetric key algorithms consisting of a private key and a public key, in which the private key is used to make a digital signature and the public key is used to check the digital signature. Digital signatures ensure authenticity, integrity and undeniability but do not ensure the confidentiality of data messages."* Article 22.3 details the conditions under which an electronic signature can be considered a lawful digital signature: (i) Be able to certify the signatory the signer and affirm his/her approval of to the data message; (ii) The data that generates the digital signature is only associated with the content of the approved data message; (iii) The data that generates the digital signature is only under the control of the signatory at the time of signing; (iv) Any changes to the data message after the signing time may be detected; (v) Must be secured by a digital signature certificate; (vi) The means of creating digital signatures must ensure that the data generating digital signatures is not disclosed, collected or used for the purpose of counterfeiting signatures; ensure that data generating digital signatures can only be used once; do not alter the data to be signed. The legal validity of digital signatures under the Law on Electronic Transactions 2023 is also clearly recognized in Article 23.2: *"Specialised electronic signatures for security or digital signatures have the same legal validity as the signature have the same legal validity as the*

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JULY 2024

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signature of that individual in a paper document."



3. Amending and supplementing prohibited acts in electronic transactions

Article 6 of the Law on Electronic Transactions 2023 stipulates 8 types of prohibited acts in electronic transactions: (i) Taking advantage of electronic transactions to infringe upon national interests, national security, social order and safety, public interests, and legitimate rights and interests of agencies, organizations and individuals; (ii) Illegally obstructing or preventing the process of creating, sending, receiving, and storing data messages or committing other acts to undermine the information system serving electronic transactions; (iii) Illegally collecting, providing, using, disclosing, displaying, spreading, and trading data messages; (iv) Counterfeiting, distorting or illegally deleting, invalidating, copying, and moving part or all of the data messages; (v) Creating data messages to commit illegal acts; (vi) Fraudulently making, counterfeiting, appropriating or illegally using electronic transaction accounts, electronic

certificates, electronic signature certificates, and electronic signatures; (vii) Obstructing the choice to conduct electronic transactions; (viii) Other acts prohibited by law.

4. Supplementing regulations on the legal validity of data messages

One of the very notable new points of the Law on Electronic Transactions 2023 is the supplementation of regulations on the conversion of form and legal value between paper documents and data messages in Article 12. Accordingly, data messages converted from paper documents must meet the following requirements:

- (i) The information in the data message ensures the same integrity as paper documents;
- (ii) The information in the data message is accessible and usable for reference;
- (iii) There is a distinct symbol certifying the conversion from the paper document into the data message and information of the converting agency, organization or individual;
- (iv) In case the paper document is a license, certification, certificate, confirmation or another written approval issued by a competent agency or organization, the conversion must bear the digital signature of the converting agency or organization, unless otherwise provided for by law.

In addition to the regulation that data messages are valid as documents and as originals, compared to

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NEWSLETTER

the Law on Electronic Transactions 2005, the Law on Electronic Transactions 2023 more clearly affirms the value to be used as evidence of data messages: *"Data messages can be used as evidence in accordance with the provisions of this Law and the procedure law"* (Article 11.1).

The amendment, supplementation and more detailed regulations on the legal validity of data messages are the basis for promoting electronic transaction activities to take place in the whole process, carried out entirely by electronic means.

5. Supplementing the legal basis for e-contracts

The Law on Electronic Transactions 2023 supplements the definition of "electronic contract" in Article 3.16: *"An electronic contract means a contract established in the form of a data message."* Chapter IV of this Law contains basic regulations on the conclusion and performance of electronic contracts, the Law has assigned responsibilities to ministers and heads of ministerial-level agencies to promulgate according to their competence or propose competent authorities for promulgation detailed guidance on this issue.

Notably, the previous law on electronic transaction did not have a legal basis for the notarization and authentication of electronic contracts. For transactions that are required by

law to be notarized, the form of such contracts and transactions must be expressed in writing to carry out notarization procedures in accordance with the law on notarization. The Law on Electronic Transactions 2023 creates a legal basis for the notarization and authentication of data messages in Article 9.2, whereby electronic contracts can be carried out notarization and authentication procedures in the electronic environment to meet the conditions for the validity of the transaction if the law requires the contract to be expressed in the form of notarization, authentication.

The Law on Electronic Transactions 2023 also supplement basic regulations for a new trust service, which is the data message authentication service (Article 28.1.b) in general and the electronic contract authentication service in commerce in particular. This is the initial basis for notarization and authentication of electronic contracts in the future, facilitate the increase of the integrity and authenticity of e-contracts as well as expanding the scope of fields in which the parties are allowed to making transactions in the form of electronic contracts.



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JULY 2024

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HIGHLIGHTS OF NEW PROVISIONS IN THE LAW ON PROTECTION OF CONSUMER'S RIGHTS 2023



On June 20, 2024, the National Assembly promulgated the Law on Protection of Consumer's Rights No. 19/2023/QH13, which officially came into effect from July 1, 2024 ("**Law on Protection of Consumer's Rights 2023**"), replacing the old law issued in 2010 ("**the Old Law**"). We would like to provide our Valued Customers with the following highlights of the new provisions mentioned in the Law on Protection of Consumer's Rights 2023 for your timely update:

1. **Supplemented definition of the term "consumer":**

Consumers under the Old Law were defined as individuals who purchase and use goods and services for personal, household, and organizational consumption purposes. However, in the Law on Protection of Consumer's Rights 2023, this term has been further supplemented: "Consumers are individuals who purchase and use **products**, goods, and services for the purpose of personal and household consumption, and for the purpose of **state agencies** and

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JULY 2024

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organizations, and **not for profit**".

2. **Supplemented categories of vulnerable consumers:**

The categories of vulnerable consumers mentioned in Clause 1, Article 8 of the Law on Protection of Consumer's Rights 2023 include: (i) The elderly as stipulated by the law on the elderly; (ii) Persons with disabilities as stipulated by the law on persons with disabilities; (iii) Children as stipulated by the law on children; (iv) Ethnic minorities; persons living in ethnic minority and mountainous areas, islands, and areas with difficult socio-economic conditions, and areas with exceptionally difficult socio-economic conditions as stipulated by law; (v) Pregnant women or mothers with children under 36 months old; (vi) Persons with severe illnesses as stipulated by law; and (vii) Members of poor households as stipulated by law.



3. **Supplemented consumer rights and obligations:**

The Law on Protection of Consumer's Rights 2023 identifies 11 consumer rights, including some new rights compared to the Old Law, specifically: (i) Being provided conditions to choose a healthy and sustainable consumption environment; (ii) Being protected when using public services as stipulated by the Law on Protection of Consumer's Rights 2023; and (iii) Other rights as stipulated by law.

The addition of more consumer's rights aims to better protect consumer interests and strengthen the responsibilities of businesses and organizations providing goods and services to consumers.

The obligations of consumers have also been supplemented in the Law on Protection of Consumer's Rights 2023, including: (i) Compliance with the conditions, instructions for transportation, storage, and use of goods and services; regulations on inspection, environmental protection, and sustainable consumption as prescribed by law; (ii) Responsibility for providing inaccurate or incomplete information related to transactions

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between consumers and business organizations and individuals as prescribed by law; and (iii) Other obligations as prescribed by law.

4. Supplementing the cases where liability for damage compensation is exempted:

Business organizations and business individuals shall be exempt from liability for damage compensation caused by defective products or goods in certain fixed cases. Article 35 of the Law on Protection of Consumer's Rights 2023 has a new case compared to the Old law: When a business organization or individual discovers that a product or goods have defects, has fully applied the measures prescribed by law such as recall and handling, but the consumer still intentionally uses it and suffers damage despite having received full information from the business organization or individual, then that business organization or individual shall be exempt from liability for damage compensation.

5. Appearance of the term "remote transaction":

Remote transaction is a term that first appeared in the Law on Protection of Consumer's Rights 2023. The term is defined in Clause 5, Article 3 of this Law as transactions conducted on the internet, electronic means, or other means where consumers do not have the opportunity to directly inspect or contact the product, goods, or services before participating in the transaction.

6. Supplement cases where negotiation and mediation are not permitted:

Disputes arising between consumers and business organizations and business individuals will be resolved through 4 methods, including the method of negotiation and mediation. However, there are certain cases where the two aforementioned methods are not allowed to be chosen. Compared to the Old law, which only stipulated the single case of disputes causing harm to the interests of the State, many consumers and the public interest, the 2023 Law on Protection of Consumer Rights has supplemented 3 clearer cases: (i) Infringing on national, ethnic, or public interests; (ii) Violating legal prohibitions or against social ethics; and (iii) Causing damage to the interests of many consumers, except for cases where the number of affected consumers is fully determined.



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JULY 2024

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DRAFT CASE LAW NO.16/2024 REGARDING THE DETERMINATION OF THE CIVIL DISPUTE OVER PROPERTY RECLAIM



Source of Case Law:

The cassation review decision No. 13/2022/KDTM-GDT dated December 12, 2022 issued by the Council of Judges of the Supreme People's Court about the "Dispute over service contract" between the plaintiff, Company M, and the defendant, Company A JSC.

Position of Case Law Content:

Paragraphs 5 and 6 of the Court's Judgment.

Summary of Case Law:

- Background:

On July 1, 2012, Company M (Plaintiff) and Company A JSC (Defendant) entered into a service contract, whereby Company M was the supplier providing services and technical guidance on

producing Kraft paper pulp for Company A JSC. After a while of performing the contract, the parties agreed to terminate the contract on November 23, 2012. From July to November 2012, Company M sent invoices requesting Company A to pay for the services rendered. During the meetings on

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December 8, 2012 and March 27, 2013, as well as in Letter No. 10/AHP-MC/2013 dated June 1, 2013 issued by Company A, it acknowledged its obligation to pay for the services under the contract to Company M. However, until 2018, Company A had not made the payment as committed, prompting Company M to file a lawsuit at the competent court to demand payment from Company A. When sued, Company A requested the court to apply the statute of limitations for lawsuits, rejecting Company M's claim because the case had expired beyond the time limit.

- Legal Solution:

At the cassation review court session, the court reviewed and concluded that the dispute between the parties was a civil dispute over property reclamation. Accordingly, the court annulled the appellate and first-instance decisions on dismissing the case due to the expiration of the statute of limitation for lawsuit.

Relevant Legal Regulations:

Clause 2, Article 155 of the 2015 Civil Code.

Keywords of the Case Law:

“Service Contract”; “Property Reclamation”; “Non-application of Statute of Limitations”.

Our Commentary:

1) Determination of Dispute Type:

At the first-instance and appellate levels, the court identified the dispute between Company M and Company A over the request for payment of service fees as a dispute over a service contract. However, considering facts in the case, it shows that the contract termination was based on mutual consent; regarding the payment obligation after contract termination, Company A already acknowledged the payment obligation to Company M. Therefore, Company M's request for Company A to fulfill its payment commitment after the contract termination was not a dispute arising from the service contract. At the cassation review court



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session, the Court determined the dispute between the parties as a property reclamation dispute because the parties no longer argued over the service contract. The cassation review panel's re-determination is significant for resolving the case because misidentifying the nature of the dispute can lead to different legal consequences, affecting the rights and obligations of the parties involved in the case.

2) *Request for applying the Statute of Limitations for Lawsuit:*

As analyzed above, the cassation review panel identified the dispute between the parties as a property reclamation dispute. According to Clause 2, Article 155 of the 2015 Civil Code:

“Non-applicability of prescriptive periods

A prescriptive period for initiating legal action for a civil case shall not apply in any of the following cases:

[...] 2. Request for the protection of ownership rights, unless otherwise provided by this Code or relevant laws. [...]”.

The property reclamation is considered a request for the protection of ownership rights, and therefore, the current case is not subject to be applied the statute of limitations. Regarding the case between Company M and Company A, the Defendant's request for the application of the

statute of limitations and decision on dismissal of the case is not suitable for legal provisions. At the cassation review court session, the court annulled the appellate decision on resolving the appeal on decision on the dismissal of the case no. 37/2020/QĐ-PT dated May 6, 2020 issued by the High People's Court in Hanoi and the decision on the dismissal of the commercial business case no. 01/2019/QĐST-KDTM dated November 30, 2019 issued by the Tuyen Quang Provincial People's Court regarding the commercial business case “Service contract dispute” between Company M and Company A, as well as transferred the case file to the Tuyen Quang Provincial People's Court for resolving the case according to first-instance procedures in accordance with the law.



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LEGAL DOCUMENTS IN 7/2024

NO.	EFFECTIVE DATE	NAME
COMMERCIAL		
1.	July 01, 2024	The Electronic Transactions Law No. 20/2023/QH15 issued by the National Assembly on June 22, 2023.
ENTERPRISE		
1.	July 01, 2024	The Enterprise Law No. 17/2023/QH15 issued by the National Assembly on June 20, 2023.
2.	July 01, 2024	Circular 36/2024/TT – BTC establishes the Vietnamese valuation standards for enterprise valuation issued by the Minister of Finance on May 16, 2024.
3.	July 01, 2024	Circular 38/2024/TT – BTC provides regulations on evaluating enterprise valuation activities; setting aside occupational risk reserves, reporting mechanisms on enterprise valuation activities, and the costs associated with valuation by the Valuation Council issued by the Minister of Finance on May 16, 2024.
4.	July 01, 2024	Circular 09/2024/TT – BKHĐT regarding forms for registering cooperative unions, cooperatives, cooperative alliances, and regulations on information content, updating, exploitation, and management of the national information system on cooperatives issued by the Minister of Planning and Investment on May 16, 2024.
BANK		
1.	July 01, 2024	The Credit Institutions Law No. 32/2024/QH15 issued by the National Assembly on January 18, 2024.

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2.	July 01, 2024	Decree No. 52/2024/ND-CP on non-cash payments issued by the Government on May 15, 2024.
3.	July 01, 2024	Circular 21/2023/TT-NHNN amending regulations related to business activities under the management scope of the State Bank of Vietnam on December 29, 2023.
4.	July 01, 2024	Circular 07/2024/TT-NHNN on payment intermediary activities issued by the Governor of the State Bank of Vietnam on June 21, 2024.
5.	July 01, 2024	Circular 03/2024/TT-NHNN amending Circular 19/2013/TT-NHNN on the purchase, sale, and handling of non-performing loans by the Asset Management Company of Vietnamese credit institutions issued by the State Bank of Vietnam on May, 16, 2024.
6.	July 01, 2024	Circular 16/2023/TT-NHNN amending Circular 28/2015/TT-NHNN on the management and use of digital signatures, digital certificates, and digital signature authentication services by the State Bank of Vietnam on December 15, 2024.

CIVIL LIABILITY

1.	July 01, 2024	Resolution No. 01/2024/NQ-HĐTP guides the application of legal provisions in resolving family and marriage-related cases issued by the Council of Judges of the Supreme People's Court on May 16, 2024.
2.	July 26, 2024	Circular No. 05/2024/TT-BTP regulates the reporting and statistical reporting system for civil enforcement judgments and administrative enforcement monitoring issued by the Ministry of Justice on June 10, 2024.

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TAXES – FEES - LEVIES

- | | | |
|----|---------------|--|
| 1. | July 01, 2024 | Circular No. 41/2024/TT-BTC amends Circular No. 44/2017/TT-BTC on the tax calculation framework for resources of similar physical and chemical nature and Circular No. 152/2015/TT-BTC providing guidance on resource taxes issued by the Minister of Finance on May 20, 2024. |
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INTELLECTUAL PROPERTY

- | | | |
|----|---------------|--|
| 1. | July 01, 2024 | Decree No. 46/2024/NĐ-CP amending Decree No. 99/2013/NĐ-CP on administrative penalties in the field of industrial property rights as amended by Decree No. 126/2021/NĐ-CP issued by the Government on May 4, 2024. |
|----|---------------|--|

LABOUR

- | | | |
|----|---------------|--|
| 1. | July 01, 2024 | Decree No. 75/2024/ND-CP adjusts pensions, social insurance benefits and monthly benefits issued by the Government on June 30, 2024. |
|----|---------------|--|