

**DECREE
ON ELECTRONIC COMMERCE**

THE GOVERNMENT

Pursuant to Government Organization Law dated December 25, 2001;
Pursuant to Commercial Law dated June 14, 2005;
Pursuant to E-Transaction Law dated November 29, 2005;
At proposal of the Minister of Trade;

HEREBY DECREES

**CHAPTER I
GENERAL PROVISIONS**

Article 1. Scope of Application

This Decree applies to:

1. The use of electronic communications in commercial and commercial-related activities in the territory of the Socialist Republic of Vietnam.
2. The use of electronic communications in commercial and commercial-related activities conducted outside the territory of the Socialist Republic of Vietnam, whereby the parties agree to apply Commercial Law and this Decree.
3. This Decree does not apply to electronic communications that are bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.

Article 2. Subjects of Application

This Decree applies for:

1. Merchants using electronic communications in commercial and commercial-related activities.

2. Other organizations and individuals using electronic communications in commercial-related activities.

Article 3. Definition

For the purpose of this Decree, the following terms shall be construed hereafter:

1. "Communication" is any contract, request, notice, statement, receipt or other document that are made in connection with the formation or performance of a contract;
2. "Electronic communication" is communication made by means of data messages;
3. "Data message" is information generated, sent, received or stored by electronic means.
4. "Originator" is a party by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, but it does not include a party acting as an intermediary with respect to that electronic communication;
5. "Addressee" is a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic
6. "Information system" is a system for generating, sending, receiving, storing or otherwise processing data messages;
7. "Automated message system" is a computer program or an electronic or other automated means used to initiate an action or respond to data messages, without review or intervention by a natural person each time an action is initiated or a response is generated by the system;
8. "Place of business" is the place where a party conducts business activities other than the temporary provision of goods or services out of a specific location.

Article 4. Place of business of the parties.

1. A party's place of business is the location indicated by that party, unless another party demonstrates that the party making the indication does not have a place of business at that location
2. If a party has not indicated a place of business and has more than one place of business, then the place of business is that which has the closest relationship to the relevant contract, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.
3. If a natural person does not have a place of business, his or her place of business is deemed to be the person's habitual residence

4. A location is not a place of business merely because that is where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or where the information system may be accessed by other parties.

5. The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

Article 5. State management over electronic commerce

Functions of state management over electronic commerce include:

1. To contemplate and implement strategies, schemes, plans and policies for the development of electronic commerce.
2. To stipulate and implement legislations on electronic commerce.
3. To stipulate standards for electronic commerce.
4. To organize electronic commerce training and awareness raising, to provide support activities for application of electronic commerce.
5. To supervise enforcement of electronic commerce legislations, settle petitions and complaints, and penalize violations of regulations governing electronic commerce.
6. To organize and monitor international cooperation on electronic commerce.

Article 6. State management bodies for electronic commerce

1. Ministry of Trade shall take responsibility before the Government for state management over electronic commerce.
2. Other ministries, ministerial or governmental bodies, provincial People's Committees, within the scope of their authority, shall be responsible to cooperate with Ministry of Trade on the implementation of state management over electronic commerce.

CHAPTER II

LEGAL RECOGNITION OF ELECTRONIC COMMUNICATIONS

Article 7. Legal validity

A communication shall not be denied validity or enforceability on the sole ground that it is in the form of electronic communication.

Article 8. Legal effect as writing

Where the law requires that a communication should be in writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference:

Article 9. Legal effect as original

1. Where the law requires that a communication should be made available or retained in its original form, that requirement is met in relation to an electronic communication if:

(a) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and

(b) The information it contains is capable of being displayed when needed.

2. The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from any change that arises in the normal course of communication, storage and display;

3. The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and all the relevant circumstances.

Article 10. Legal effects of electronic signature

Where the law requires that a communication should be signed by a party, that requirement is met in relation to an electronic communication if:

(a) A method is used to identify the party and to indicate that party's intention in respect of the information contained in the electronic communication; and

(b) The method used is reliable for the purpose for which the electronic communication was generated or communicated, in the light of all relevant circumstances.

CHAPTER III

ELECTRONIC COMMUNICATIONS IN COMMERCIAL ACTIVITIES

Article 11. Time and place of dispatch and receipt of electronic communications

1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator. In case the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.

2. The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address.

An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.

3. An electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business.

4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of this article.

Article 12. Invitations to make offers

A proposal to conclude a contract made through electronic communications which is not addressed to any specific party is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

Article 13. Use of automated message systems for contract formation

A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

Article 14. Availability of contract terms

A party offering goods or services through an information system that is generally accessible to persons making use of information systems shall, for a personal period of time) make the electronic communications which contain the contract terms available to the other party in a way that allows for their storage and use.

Article 15. Error in electronic communications

1. Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the

party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

(a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and

(b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

2. Nothing in this article affects the application of any rule of law that may govern the consequences of any error other than as provided for in paragraph 1.

CHAPTER III PENALTY ON VIOLATIONS

Article 16. Acts of violations

1. To hinder or restrain the capacity of individuals and organizations in using electronic communications.
2. To hinder or restrain the capacity of individuals and organizations in choosing electronic means and technology to conduct commercial activities.
3. To illegally alter, erase, destroy, copy, disclose, move, forge, or deprive electronic communications in part or in whole.
4. To intrude upon or destroy information systems used for electronic commerce.
5. To generate, send, transmit, receive, or process electronic communications for illegal purposes.
6. Other acts of violations related to the use of electronic communications as stipulated by law.

Article 17. Penalty on violations

1. Organizations violating regulations on the use of electronic communications in commercial activities are, according to the nature and level of violation, subject to administrative penalty, operation suspension, or financial compensation for the damaged party.
2. Individuals violating regulations on the use of electronic communications in commercial activities are, according to the nature and level of violation, subject to administrative penalty, criminal prosecution, or financial compensation for the damaged party.

CHAPTER IV IMPLEMENTATION

Article 18. Legal enforcement

This Decree comes into effect 15 days after its release on the Public Legal Bulletin. Previous regulations counter to this Decree shall be annulled.

Article 19. Implementation

1. Ministry of Trade takes lead and coordinates with other ministries, ministry-level agencies to stipulate in details the use of electronic communications in trade of goods and services on the sensitive list; form of electronic communications in online trading; consumer protection in electronic commerce, and other related regulations..
2. Ministers, heads of ministry-level agencies, heads of governmental organizations, and Chairmen of provincial People's Committees are responsible for implementing this Decree.

ON BEHALF OF THE GOVERNMENT
PRIME MINISTER

(signed)

Phan Van Khai