

Validity of Electronic Signatures in Myanmar

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The COVID-19 pandemic impacts all aspects of our daily life. Government authorities around the world impose various measures to reduce the physical contacts among people, including travel ban and movement restriction (*i.e.* stay-at-home order). Nevertheless, transactions can still be performed by electronic means, including electronic communication/transmission and execution by e-signature at this point of time. To be in trend with the digital age, Myanmar also allows electronic signature documents to be exhibited as evidence in Myanmar Courts as well as recognizes the legal validity of electronic signature inserted onto commercial documents.

Electronic Transactions Law 2004

Section 19 of the Electronic Transactions Law 2004 (“**ETL**”) specifies that documents to be signed under any existing law may be made by electronic record, electronic data message or electronic signature. Under the ETL, electronic signature is defined as *“any symbol or mark arranged personally or on his behalf by electronic technology or any other similar technologies to verify the authenticity of the source of the electronic record and the absence of amendment or substitution.”*

Nevertheless, in our view, certain provisions of the ETL may have to be relooked and amended to enable increase in usage of electronic signatures in Myanmar. For instance, *inter alia*, Section 16 of the ETL, requires the authentic signer of an electronic signature (defined as “Subscriber”) to obtain the “Certificate” from a “Certification Authority” (*i.e.* licensed service provider) in order to perform as a Subscriber while the Certification Authority may however refuse the Subscriber’s application at its discretion.

[Notes: Under the ETL, “Certificate” is defined as *“the certificate issued to the Subscriber by the Certificate Authority as an electronic data message or other record identifying the relationship between the signer of an electronic signature and the electronic data message.”* Certification Authority” is defined therein as *“a person or an organization that has been granted a license by the Control Board under this law for services in respect of the electronic signature.”*]

It is also important to note that the ETL does not apply to documents as set forth in Section 5 of the ETL, which include will, negotiable instrument, trust, power of attorney, documents relating to title, and instruments that are required to be registered under existing laws.

Amendment of Evidence Act 2015

Section 67A of the Evidence Act, as amended in 2015 ("EA") specifies that an electronic record will be constituted as a valid signature for the purposes of evidence, if the identity of the person and the person's intention concerning the information in the document can be established. This is a great leap, whereby electronic signatures are now recognized as evidence and it is enforceable in Myanmar Courts.

Conclusion

Investors doing business in Myanmar may sign off and transmit a document by electronic means, in the juncture of COVID-19 pandemic, however we recommend necessary precaution be taken in commercial transactions to mitigate the risks, in particular, taking into consideration the legal system in Myanmar is still in the status of flux and the related perfection requirements (depending on the nature of the documents) for ensuring enforceability from a Myanmar law perspective.

For More Information

If you have any questions about this *Alert*, please contact Leon Yee, Krishna Ramachandra, Priyank Srivastava, Wang Bei, Ken Tan, any of the attorneys in our Singapore office or the attorney in the firm with whom you are in regular contact.

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