

asean insiders series

● DECEMBER 2020

Electronic & Digital Signatures in ASEAN

ELECTRONIC & DIGITAL SIGNATURES IN ASEAN

The COVID-19 pandemic has accelerated the adoption of digital solutions including the use of electronic signatures. While electronic signatures are broadly accepted in the region, they are still subject to various practical and regulatory considerations, including:

- (1) Cybersecurity considerations;
- (2) Legal and regulatory considerations (the types of documents which can be electronically signed); and
- (3) Administrative considerations (whether regulators will accept filings which have been duly signed electronically).

These considerations require more scrutiny before businesses adopt such technology, especially where the regulators do not adopt a consistent approach towards the acceptance of electronic signatures. For example, different regulators in the same country may have differing standards when it comes to the acceptance of electronic signatures, or in some cases, may reject electronically signed documents.

Nevertheless, we have seen more interest and greater push by governments in ASEAN to facilitate the use of electronic signatures, not just in response to the current pandemic but more broadly as an integral pillar of creating a more resilient business ecosystem to face future pandemics or uncertainties.

This publication provides a snapshot of the various aspects that are relevant to the use of electronic signatures across ASEAN.



Nadarashnaraj Sargunaraj

Partner

nadarashnaraj@zicolaw.com

Governing legislation	Electronic Transactions Act, 2008. Chapter 196 (“ETA”).
Regulatory authority	Ministry of Finance & Economy.
Definition of electronic and digital signature	Electronic Signature is defined in the ETA as any letters, characters, numbers or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted with the intention of authenticating or approving the electronic record.
Similarities and differences between electronic and digital signatures	Electronic signatures is defined in the ETA to include digital signatures (please see above).
Circumstances where electronic signatures can be used	<p>Generally, any electronic signature which fulfils the criteria in the ETA is legally recognised and can be used in Brunei. The courts are likely to take a practical approach to give legal recognition to these commonly used electronic signatures, where they fulfil the criteria under the ETA, for example:</p> <ul style="list-style-type: none"> • typing a person’s name into an electronic document; • using a special pen to sign on a digital pad; • use of specialised electronic signature software service or PDF signature affixed on an electronic document; • clicking a link or “I agree” box.
Types of documents included and excluded	<p>All documents may be signed using electronic signature except for:</p> <ul style="list-style-type: none"> • any legal instrument or document under any written law relating to Islamic law; • the creation or execution of a will under any written law relating wills; • negotiable instruments; • the creation, performance or enforcement of an indenture declaration of trust or power of attorney with the exception of constructive and resulting trusts; • any contract for the sale or other disposition of immovable property, or any interest in such property; • the conveyance of immovable property or the transfer of any interest in such property; • documents of title relating to immovable property.
Enforceability	The ETA declared that information shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.
Filing and registration requirements	<ul style="list-style-type: none"> • Company filings: Yes, electronically signed documents are accepted for filings where the documents are filed online and filing is to be made with the Registry of Companies, Brunei. • Real estate: No, electronically signed documents are not accepted for filing and registration. Instruments dealing with land under the National Land Code must be signed with wet-ink signature and filing is to be made with the district land offices. • Intellectual property: Yes, where the documents are filed electronically, and filing is to be made with the Brunei Intellectual Property Office (BrulPO). • Security related filings: Yes, if a prescribed security procedure or a commercially reasonable security procedure agreed to by the parties involved has been properly applied to an electronic record to verify that the electronic record has not been altered since a specified point in time, such record shall be treated as a secure electronic record from such specified point in time to the time of verification. • Tax filings: Not applicable.
Admissibility in court	The Evidence Act, Chapter 108 provides that a document produced by a computer is admissible as evidence of any fact stated in that document, if the document was produced by a computer “in the course of its ordinary use”.



Governing legislation	<ul style="list-style-type: none">• Law on Electronic Commerce 2019 (“E-Commerce Law”)• Sub Decree No. 246 on Digital Signature 2017 (“Sub Decree No. 246”)
Regulatory authority	Ministry of Posts and Telecommunications (“ MPT ”).
Definition of electronic and digital signature	<p>Under E-Commerce Law, electronic signatures are defined as any signatures which have been created through electronic means for the purpose of identifying the signatory, including digital signature, biomass signature, and other signatures.</p> <p>Furthermore, an electronic signature may satisfy the requirements of a signature, if the electronic signature is created through means:</p> <ul style="list-style-type: none">• in which the identity and the consent of the signatory on the communication can be identified; and• which is reliable according to the characteristic, purpose, and circumstance of the communication. <p>Under Sub Decree No. 246, a “digital signature” refers to the data attached with the electronic message, certifying the identity of the digital signatory, and verifying the authenticity of such electronic message signed by the digital signatory. To be considered as a digital signature, it must fulfil the following requirements:</p> <ul style="list-style-type: none">• certify the accurate and specific identity of the signatory;• certify the authenticity of the message;• certify the time and date of the execution of the digital signature; and• other requirements as determined by the MPT.
Similarities and differences between electronic and digital signatures	<p>Under E-Commerce Law, it is not explicitly stated whether electronic signatures and digital signatures are the same or not. However, under the provided definition of electronic signatures, digital signature is listed as a type of electronic signature.</p> <p>Even though digital signatures are a category of electronic signature, the requirements for a digital signature, to be considered valid are generally more restrictive than those of an ordinary electronic signature.</p> <p>Though, under both provisions of the E-Commerce Law and Sub Decree No. 246, an electronic signature and a digital signature possess the same legal recognition, so long as they are valid.</p>
Circumstances where electronic signatures can be used	<p>Under the E-Commerce Law, there is no specific provision on the circumstances in which electronic signatures can be used. However, generally, so long as it fulfils all the requirements stated in the E-Commerce Law, the e-signature is legally recognised and can be used in commercial and civil activities, documents, and transactions, including creating electronic records, executing contracts, electronic communication, and used as evidence (with the exception of those which are discussed below).</p>
Types of documents included and excluded	<p>Although, while not explicitly stated under E-Commerce Law, it can be interpreted that electronic signatures can be used for all commercial and civil activities, documents, and transactions, except those related to:</p> <ul style="list-style-type: none">• the creation and enforcement of Power of Attorney;• the creation or signing on testaments, codicils, and other matters related to succession;• any contract for the sale, transfer, or waving of rights over immovable property or other benefits over such property;• the transfer of immovable property or any benefits related to immovable property; and• other cases as determined in a sub decree. <p>It can also be used by governmental institutions for activities and transactions such as:</p> <ul style="list-style-type: none">• the acceptance of registration documents or the fulfilment of the requirements for the creation or storing documents;• the issuance of licenses or permits;• determination of means and methods of payment; and• other activities determined by the institutions.
Enforceability	<p>Under E-Commerce Law, it is stated that the validity, legal effect, acceptability, and enforceability of electronic communication cannot be refused solely on the grounds that it was created in electronic form. This is also applicable for contracts made in electronic form.</p> <p>Similarly, according to Sub Decree No. 246, electronic messages attached with digital signatures certified by certifying authority, have the same legal value as a written notice.</p>

Filing and registration requirements

Under E-Commerce Law, there is no provision on the requirement of registration of documents which have been electronically signed.

However, particularly for digital signatures, although documents digitally signed are not required to be registered, Sub Decree No. 246 only recognises the legal validity of documents attached with a digital signature which have been certified by a MPT-licensed certifying authority.

Pursuant to the E-Commerce Law, the following documents may not be electronically signed:

- the creation and enforcement of Power of Attorney;
- the creation or signing on testaments, codicils, and other matters related to succession;
- any contract for the sale, transfer, or waiving of rights over immovable property or other benefits over such property;
- the transfer of immovable property or any benefits related to immovable property; and
- other cases as determined in a sub decree.

Admissibility in court

Under E-Commerce Law, electronic communications and records, including e-signatures, cannot be rejected as evidence purely on the basis that it is in electronic form or that it is not the original form.

Furthermore, the Law also allows any document which has been printed from electronic records to be admissible as evidence, provided that the document is duly printed in accordance with the original content.

As for electronic records originating from foreign countries, the record may be admissible, if it has been certified by the competent authorities of the foreign country, and the electronic system used to record or store the electronic record is accurate in accordance with the standards set in the E-Commerce Law.



Governing legislation	Indonesian legislation regulates electronic transaction (including e-approval and e-signature) mainly in Law No. 11 of 2008 on Electronic Transaction and Information as amended with Law No.19 of 2016 (“ EIT Law ”), and its implementing regulation, Government Regulation No. 71 of 2019 on the Implementation of Electronic System and Transaction (“ GR 71/2019 ”).
Regulatory authority	<ul style="list-style-type: none">• Ministry of Communication and Information Technology (“MOCI”).• The Electronic Certification Organiser/ <i>Penyelenggara Sertifikasi Elektronik</i> under the direct supervision of the Directorate of Information Security of MOCI (for implementation of e-signature).
Definition of electronic and digital signature	<p>According to EIT Law, electronic or digital signature is a signature consisting of electronic information attached, associated or related to other electronic information used as a tool for authentication and validation purposes.</p> <p>An e-signature that represents a legal entity is called an electronic seal (e-seal). Based on Article 65 of GR 71/2019 all provision on e-signature in GR 71/2019 will also apply to an e-seal. Accordingly, the procedures/requirements that apply to e-signature apply to e-seal as well.</p> <p>Article 60 paragraph (2) of GR71/2019 provides that e-signature includes certified e-signature (which has a stronger evidentiary value) and non-certified e-signature. Please note that both certified e-signature and non-certified e-signature are binding to the party who signs them.</p> <p>With regards to the certification of e-signatures, according to Article 60 paragraph (3) of GR 71/2019, a certified e-signature must comply with the following requirements:</p> <ul style="list-style-type: none">• fulfilling the legal validity and legal consequence of an e-signature as stated in Article 59 paragraph (3) GR 71/2019; and• using an electronic certificate (electronic certificate is defined as electronic certificates that contain electronic signatures and identities that show the legal subject status of the parties in electronic transactions issued by electronic certification organisers), which is made by an Indonesian electronic certification organiser.
Similarities and differences between electronic and digital signatures	<p>There is no distinction between digital signature and e-signature under the EIT Law.</p> <p>However, in practice, the term “digital signature” is used by the National Cyber and Crypto Agency (“NCCA”) to refer to certified e-signature.</p> <p>NCAA is a Government agency under and responsible to the President, which has the duty to ensure cybersecurity is implemented in the most effective and efficient way by utilising, developing, and consolidating all the elements related to cybersecurity.</p>
Circumstances where electronic signatures can be used	<p>There is no specific provision under the prevailing regulations as to the circumstances when e-signature can be used. However, Article 5(4) of EIT Law provides that an e-signature is not applicable for:</p> <ul style="list-style-type: none">• documents which are required by law to be made in written form, including but not limited to, tradable securities or exchanges, and letters used in the process of enforcing civil, criminal, and state administrative procedures; and• documents which are required by law to be made in a notarial or land conveyancers deed form, including but not limited to, land deeds and/or certificates.
Types of documents included and excluded	<p>Generally, documents that can be electronically signed are the documents for electronic transactions, including but not limited to agreements and/or letters. Electronic transaction itself is a legal action carried out using computers, computer networks, and/or other electronic media, as defined under Article 1 of the EIT Law and Article 1 of GR71/2019.</p> <p>As previously mentioned, the EIT Law stipulates that the following documents cannot be electronically signed:</p> <ul style="list-style-type: none">• documents which are required by law to be made in written form, including but not limited to, tradeable securities or exchanges, and letters used in the process of enforcing civil, criminal, and state administrative procedures; and• documents which are required by law to be made in a notarial or land conveyancers deed form, including but not limited to, land deeds and/or certificates.
Enforceability	<p>Pursuant to Article 11 of the EIT Law and Article 59 of GR71/2019, e-signatures have valid legal force and legal implications as long as it fulfils the following requirements:</p> <ul style="list-style-type: none">• e-signature producing data is only related to the signer;• e-signature producing data upon the electronic signing process is only in the authority of the signer;• in the event there are changes after signing using e-signature, such changes must be discoverable;• in the event there are changes to the electronic information after signing using e-signature, such changes must be discoverable;• there are certain methods to identify who is the signer of the e-signature; and• there are certain methods to show that the e-signature’s signer has provided approval to the relevant electronic information that uses the e-signature. <p>Further, elucidation of Article 11 of EIT Law emphasises that e-signatures have an equal position to manual signatures in general and have the same legal force and legal effect.</p>

Filing and registration requirements

Both EIT Law and GR71/2019 are silent with regard to filing and registration requirements for electronically signed documents.

Electronically signed documents are accepted for filings as long as the concerned documents are not classified as documents that are unable to be electronically signed, as mentioned above.

Company filings, real estate, intellectual property, security related filings, and tax filings are documents that are required by law to be made in written form and/or are required by law to be made in a notarial or land conveyancers deed form. They are therefore not eligible to be filed or registered using e-signature.

Admissibility in court

EIT Law recognises Electronic Information and/or Electronic Documents as valid legal evidence. Although neither the EIT Law nor GR71/2019 specifically mentions e-signature as valid legal evidence, the definition of e-signature itself in both EIT Law and GR 71/2019 is a "signature which consists of Electronic Information which is adhered to, associated or related to other Electronic Information which is utilised as a verification and authentication tool". By applying this definition, e-signature is a form of electronic information, and therefore can be considered valid as legal evidence.

However, it is worth noting that the type (i.e. certified, uncertified) of e-signature may affect its evidentiary value in court. Elucidation of Article 60 of GR71/2019 explains that the legal implication of the use of certified or uncertified e-signature affects the strength of its evidentiary value, which means a certified e-signature has stronger evidentiary value than that of a non-certified e-signature in Indonesian courts. Stronger evidentiary value means the existence and validity of electronically signed documents enjoy a presumption of authenticity in the Indonesian Court.

Governing legislation	<ul style="list-style-type: none"> • Law on Electronic Signature No. 59/NA dated 12 December 2018 (“Electronic Signature Law”) • The Law on Electronic Transactions No. 20/NA dated 7 December 2012 (“Electronic Transactions Law”)
Regulatory authority	<ul style="list-style-type: none"> • Ministry of Post, Telecommunication and Communication which supervises electronic and digital signatures. • Ministry of Industry and Commerce which supervises e-commerce activities.
Definition of electronic and digital signature	<p>An electronic signature is defined as a text, symbol, mark, digit, sound or other material generated in electronic format in association with electronic data for identification and certification of the identity of the signing person and authenticity of such data.</p> <p>The types of electronic signature under the Electronic Signature Law are fundamental electronic signature, digital signature and digital seal.</p> <p>Fundamental electronic signature is defined as data generated electronically for the identification of a signing person by using a programme or electronic device without using a security encryption infrastructure that is mutually accepted between initiator and recipient.</p> <p>Digital signature is defined as data generated electronically for the identification of a signing person by using a programme or electronic device using a public key infrastructure that is mutually accepted between initiator and recipient.</p> <p>Digital seal is defined as information generated by an entity or incorporated body in electronic format with the use of technical system to use with digital signature to certify the connection between seal user and documents.</p>
Similarities and differences between electronic and digital signatures	<p>Electronic signature is the general term, which can be a fundamental electronic signature or a digital signature. A digital signature is executed with the facilitation of public key infrastructure, while the same is not required for a fundamental electronic signature.</p>
Circumstances where electronic signatures can be used	<p>Electronic/digital signatures can be used when mutually accepted by both initiator and recipient.</p> <p>In case of execution of an electronic contract, the Electronic Transactions Law further requires that:</p> <ul style="list-style-type: none"> • the parties to a contract express their intention to enter into transaction in the form of electronic means. • an electronic contract made in compliance with the Electronic Transactions Law and other laws and regulations shall be legally enforceable.
Types of documents included and excluded	<p>The Electronic Transactions Law excludes the following documents from its application:</p> <ul style="list-style-type: none"> • creation of a will; • certificates of birth, marriage, divorce, or death; • documents of title; • creation, enforcement, or certification of possession of another’s property or power of attorney; • contracts for sale, transfer, or other dispositions of ownership or any interest in land or immovable property; • petitions under the Law on Petitions; • Bills of exchange, bills of lading, warehouse receipts or any document that entitles the bearer or beneficiary to claim the delivery of goods, unless laws and regulations defined otherwise.
Enforceability	<p>The Electronic Signature Law provides that digital signature and seal affixed in accordance with requirements of the Electronic Signature Law has legal effect equal to “wet-ink” signature and seal on documents.</p> <p>An electronic contract made in compliance with the Electronic Transactions Law and other relevant laws and regulations is legally enforceable.</p>
Filing and registration requirements	<p>The electronic signature must be in compliance with all conditions specified in the Electronic Signature Law.</p> <p>An electronic signature certificate authority issues an electronic signature certificate for the generation of digital signature and seal.</p> <p>There is no regulation specifically governing electronic signature on government forms and filing.</p> <p>For documents that will need to be notarised and registered according to Lao law, such as land-related documents and contracts, there has yet been a publicly available regulation on the procedure for the notarisation and registration of electronically signed documents being adopted.</p>
Admissibility in court	<ul style="list-style-type: none"> • Civil Procedure Law No. 13/NA dated 4 July 2012 (“Civil Procedure Law”) specifically includes electronic documents as evidence in commercial cases. • In the Criminal Procedure Law No. 37/NA dated 14 November 2017 (“Criminal Procedure Law”), documentary evidence is defined as evidence in the form of letter, investigation record, minutes of court proceedings, account, drawings, pictures and other documents that is related to the criminal case. With this broad definition, one would expect that electronically executed documents will be accepted in criminal procedure as well.



Governing legislation	<ul style="list-style-type: none"> • Digital Signature Act 1997 (“DSA”) • Electronic Commerce Act 2006 (“ECA”) • Electronic Government Activities Act 2007 (“EGAA”)
Regulatory authority	<p>The Malaysian Communications and Multimedia Commission (“MCMC”) enforces the DCA, while the Ministry in charge of domestic trade and consumer affairs regulates e-commerce.</p> <p>Admissibility of electronically signed documents in litigation would be subject to the rules on evidence.</p>
Definition of electronic and digital signature	<p>Electronic signatures under the ECA is defined broadly and cover:</p> <ul style="list-style-type: none"> • any letters, symbols, characters or numbers or any combination thereof created in electronic form; • attached or associated with an electronic record; • adequately identifies the person and adequately indicates the person’s approval of the information; and • is as reliable as is appropriate given the purpose and circumstances for which the signature is required. <p>Under DSA, where any law requires a signature of a person on a document, the requirement is fulfilled by an electronic signature. However, the following conditions need to be fulfilled:</p> <ul style="list-style-type: none"> • digital signature must be verified by reference to the signer’s public key which must be listed in a valid certificate issued by a licensed authority. • signer must affix digital signature to the document with the intention of signing that document. • recipient must have no knowledge or notice that the signer: <ul style="list-style-type: none"> ◦ breached the legal duties under the DSA as an owner of a digital certificate. ◦ does not rightfully hold the private key used to affix the digital signature.
Similarities and differences between electronic and digital signatures	<p>The DSA provides legal recognition for digital signatures as a valid form of signing documents while the ECA provides legal recognition for electronic signature.</p> <p>The ECA does not prevent the use of digital signatures in electronic commercial transactions, as such parties are free to choose a digital signature as an electronic signature. In such a situation, provisions under DSA will apply.</p>
Circumstances where electronic signatures can be used	<p>Generally, any electronic signature which fulfils the criteria in the ECA is legally recognised and can be used in Malaysia. The courts are likely to take a practical approach to give legal recognition to these commonly used electronic signatures, where they fulfil the criteria under the ECA, for example:</p> <ul style="list-style-type: none"> • typing a person’s name into an electronic document; • using a special pen to sign on a digital pad; • use of specialised electronic signature software service or PDF signature affixed on an electronic document; • clicking a link or “I agree” box.
Types of documents included and excluded	<p>The documents that may be signed electronically include deeds (except for trust deeds and deeds under the National Land Code which must be signed using wet ink signature), guarantees, loan agreements and ancillary finance documents (unless wet ink signatures are required by financial institutions), tenancy agreements, company documents (unless there are prohibitions on the use of electronic signatures in the company’s constitution), and employment agreements.</p> <p>Note that for company documents, where there is a legal requirement for a company to affix its common seal to an agreement and it chooses to do so by electronic means, the company must use a digital signature under the DSA and not any other form of electronic signatures.</p> <p>The ECA excludes the use of electronic signatures for:</p> <ul style="list-style-type: none"> • powers of attorney • wills and codicils • trusts • negotiable instruments • instruments dealing with land.
Enforceability	<p>The ECA provides that contracts cannot be denied enforceability on the grounds that it was concluded electronically. However, such agreements must be stamped. Agreements which are electronically signed are also admissible in court, subject to the rules on admissibility of evidence under the Evidence Act 1950.</p>
Filing and registration requirements	<ul style="list-style-type: none"> • Company filings: Yes, electronically signed documents are accepted for filings where the documents are filed online and filing is to be made with the Companies Commission of Malaysia. • Real estate: No, electronically signed documents are not accepted for filing and registration. Instruments dealing with land under the National Land Code must be signed with wet ink signature and filing is to be made with the land offices. • Intellectual property: Yes, where the documents are filed electronically, and filing is to be made with the Intellectual Property Corporation of Malaysia. • Security related filings: Yes, for certain documents filed with the Securities Commission electronically except for applications for a licence or a registration under the Capital Markets and Services Act 2007. The e-signature used in such filings must comply with an additional set of guidelines issued by the Securities Commission, and filing is to be made with the Securities Commission. • Tax filings: Yes, where the documents are filed electronically and filing is to be made with the Inland Revenue Board Malaysia.
Admissibility in court	<p>The Evidence Act 1950 states that a document produced by a computer is admissible as evidence of any fact stated in that document, if the document was produced by a computer “in the course of its ordinary use”.</p>



Governing legislation	Electronic Transaction Law 2004 (“ ETL 2004 ”).
Regulatory authority	Ministry of Transport and Communications.
Definition of electronic and digital signature	Under Section 2(f) of ETL 2004, electronic signature means 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.
Similarities and differences between electronic and digital signatures	There is no specific definition of a digital signature in ETL 2004. However, the definition of electronic signature means 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. Therefore, we can say that an electronic signature is the same as digital signature.
Circumstances where electronic signatures can be used	Electronic signature shall apply to any kind of electronic record and electronic data message used in the context of commercial and non-commercial activities including domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information.
Types of documents included and excluded	<p>Matters prescribed to be reduced to writing or to be signed under any existing law may be made by electronic record, electronic data message or electronic signature. Moreover, in making contracts, unless otherwise agreed by the parties, offer, acceptance of offer and other requirements may be made by electronic technology.</p> <p>However, although the law recognises documents that are electronically signed, in practice certain transactions still require “wet ink signature” for instance in tax filings.</p> <p>The types of documents excluded under ETL 2004 are as follows:</p> <ul style="list-style-type: none">• “Will” defined in sub-section (h) of section 2 of the Succession Act;• “Negotiable instrument” defined in section 13 of the Negotiable Instruments Act;• “Trust” defined in section 3 of the Trusts Act;• “Power of Attorney” granted under the Powers of Attorney Act;• Documents relating to title;• Instruments prescribed in any existing law to be registered;• Matters exempted by the Ministry by issuing notification, with the approval of the Government.
Enforceability	According to ETL 2004, matters prescribed to be reduced to writing or to be signed under any existing law may be made by electronic record, electronic data message or electronic signature and shall be lawful as if they were made under the relevant law.
Filing and registration requirements	<p>Section 5(f) of ETL 2004 provided that instruments prescribed in any existing law to be registered shall not apply the electronic signature.</p> <ul style="list-style-type: none">• Company filings: Electronically signed documents are accepted for company filings.• Real estate: Documents relating to title cannot be electronically signed.• Intellectual property: Currently, electronically signed documents are not accepted. However, after new electronic filing system commences, electronically signed documents may be accepted.• Tax filings: Electronically signed documents are accepted for tax filings.
Admissibility in court	According to section 67(A) of Evidence Act 1872 amended in 2015, where any existing law requires a signature, or provides for certain consequences if a document or a record is not signed, that requirement is satisfied in relation to an electronic record if a method is used to identify the person and to indicate that person’s intention in respect of the information is contained in the electronic record.



Governing legislation	<ul style="list-style-type: none"> • Electronic Commerce Act of 2000 (“ECA”) • In addition to the ECA, the following issuances by the Philippine Supreme Court and several executive agencies also govern the use of electronic/digital signatures: <ul style="list-style-type: none"> ◦ Implementing Rules and Regulations (“IRR”) of the ECA; ◦ Rules on Electronic Evidence (“REE”); ◦ Executive Order No. 810, Series of 2009, entitled “Institutionalising the Certification Scheme for Digital Signatures and Directing the Application of Digital Signatures in E-Government Services” (“EO 810”); and ◦ Issuances implementing EO 810, such as Department of Information and Communications Technology (“DICT”) Memorandum Circular No. 2014-001, entitled “Prescribing Policies and Procedures Governing the Accreditation of Government Registration Authorities under the National Certification Scheme for Digital Signatures” (“DICT MC”).
Regulatory authority	<ul style="list-style-type: none"> • Department of Trade and Industry (“DTI”) under the ECA; • Department of Information and Communications Technology (“DICT”) is the primary agency tasked with developing and promoting the national ICT agenda.
Definition of electronic and digital signature	<p>Under ECA and its IRR, an electronic signature has the following elements:</p> <ul style="list-style-type: none"> • any distinctive mark, characteristic and/or sound in electronic form, representing the identity of a person; • attached to or logically associated with the electronic data message or electronic document or any methodology or procedures employed or adopted by a person and executed or adopted by such person; and • with the intention of authenticating or approving an electronic data message or electronic document. <p>Under the REE and DICT MC, digital signature refers to an electronic signature consisting of a transformation of an electronic document of an electronic data message using asymmetric or public cryptosystem, such that a person having the initial untransformed document and the signer’s public key can accurately determine:</p> <ul style="list-style-type: none"> • whether the transformation was created using the private key that corresponds to the signer’s public key; and • whether the initial digital document had been altered after the transformation was made.
Similarities and differences between electronic and digital signatures	<p>Under REE and the issuances of the DTI and DICT, a digital signature is classified as a type or form of electronic signature with the intention of attesting to the authenticity of the electronic document to which the digital signature is affixed.</p> <p>Both electronic signature and digital signature are recognised modes of signing documents.</p>
Circumstances where electronic signatures can be used	<p>Under the ECA, electronic signatures may be used in any electronic data message or electronic document for the purpose of authenticating and/or approving the same, in the context of commercial and non-commercial activities.</p>
Types of documents included and excluded	<p>The law does not provide any restriction as to the type of documents which may be electronically signed. It is good to note, however, that while electronic signatures have been recognised as valid and enforceable as any other document or legal writing, the law remains silent as to whether the act of notarisation may be legally and validly done via electronic signature. Thus, wet ink requirement for notarisation remains to be the practice.</p>
Enforceability	<p>Under the ECA, an electronic signature on the electronic document shall be equivalent to the signature of a person on a written document if that signature is proved by showing that a prescribed procedure, not alterable by the parties interested in the electronic document existed, under which:</p> <ul style="list-style-type: none"> • a method is used to identify the party sought to be bound and to indicate said party’s access to the electronic document necessary for his consent or approval through the electronic signature; • said method is reliable and appropriate for the purpose for which the electronic document was generated or communicated, in the light of all the circumstances, including any relevant agreement; • it is necessary for the party sought to be bound, in order to proceed further with the transaction, to have executed or provided the electronic signature; and • the other party is authorised and enabled to verify the electronic signature and to make the decision to proceed with the transaction authenticated by the same, have the same legal value as a written notice.
Filing and registration requirements	<p>There are no specific registration requirements for electronically signed documents.</p> <p>Absent any specific prohibition or restriction under the ECA and regulatory issuances, electronically signed documents are accepted for company filings, real estate, intellectual property, security related filings or tax filings, subject to the notarisation requirements of the entity to which the document is filed.</p>
Admissibility in court	<p>Under the REE, in order to have the same presumption of enforceability and admissibility of a ‘wet’ signature, electronic signatures must satisfy the following requirements:</p> <ul style="list-style-type: none"> • a method is used to identify the party sought to be bound and to indicate said party’s access to the electronic document necessary for his consent or approval through the electronic signature; • said method is reliable and appropriate for the purpose for which the electronic document was generated or communicated, in the light of all the circumstances, including any relevant agreement; • it is necessary for the party sought to be bound, in order to proceed further with the transaction, to have executed or provided the electronic signature; and • the other party is authorised and enabled to verify the electronic signature and to make the decision to proceed with the transaction authenticated by the same.



Governing legislation	Electronic Transactions Act 2010 (Cap.88) (“ETA”).
Regulatory authority	Infocomm Media Development Authority (“IMDA”).
Definition of electronic and digital signature	<p>Electronic Signature</p> <p>The term ‘electronic signature’ is not expressly defined under the ETA. Generally, the term ‘electronic signature’ is understood as an acknowledgement provided in an electronic form that a business can use to demonstrate acceptance by a party and that can electronically be used to authenticate the party involved. Examples include:</p> <ul style="list-style-type: none">• pasting a digitalised image of their manuscript signature;• signing using a stylus on a touch screen;• ticking a check box or clicking ‘I accept’ on an online form; and• selecting an option in an electronic signature software. <p>Digital Signature</p> <p>Conversely, a ‘digital signature’ is defined under the ETA. It refers to an electronic signature that consists of a transformation of an electronic record using an asymmetric cryptosystem and a hash function such that a person having the initial untransformed electronic record and the signer’s public key can accurately determine -</p> <ul style="list-style-type: none">• whether the transformation was created using the private key that corresponds to the signer’s public key; and• whether the initial electronic record has been altered since the transformation was made.
Similarities and differences between electronic and digital signatures	<p>Electronic signatures and digital signatures differ in terms of their level of security.</p> <p>To make an electronic signature “secure”, parties must either apply a specific security procedure or an agreed form of security procedure that is commercially reasonable. Whereas, digital signatures offer an added layer of security via the use of an asymmetric cryptosystem and hash function.</p>
Circumstances where electronic signatures can be used	<p>The laws of Singapore generally regards paper documents and electronic records equally. Therefore, electronic signatures may be used in many scenarios, save for documents that fall within the Excluded Matters of the ETA (see below for a further discussion).</p> <p>In determining if something amounts to a signature, IMDA understands that courts will generally look at whether the method of signature fulfils the authenticating function of a signature, and not whether the form of signature used is commonly recognised.</p>
Types of documents included and excluded	<p>Generally, where the ETA applies, documents can be electronically signed. This includes:</p> <ul style="list-style-type: none">• board/shareholder minutes and written resolutions and proxy forms;• directors consent and resignation letters; and• general certification letters. <p>However, the ETA contains a list of Excluded Matters that are excluded from the operation of the ETA (i.e., electronic signatures are not recognised as the functional equivalent of wet ink signatures.) The Excluded Matters include:</p> <ul style="list-style-type: none">• the creation or execution of a will.• negotiable instruments, documents of title, bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.• the creation, performance or enforcement of an indenture, a declaration of trust or power of attorney, with the exception of implied, constructive and resulting trusts.• any contract for the sale or other disposition of immovable property, or any interest in such property.• the conveyance of immovable property or the transfer of any interest in immovable property.
Enforceability	<p>Under the ETA, where a rule of law requires a signature, that requirement is satisfied by an electronic signature if:</p> <ul style="list-style-type: none">• a method is used to identify the signatory and to indicate the signatory’s intention in the relevant electronic record; and• the method used is (i) as reliable as appropriate for the purpose for which the electronic record was generated or communicated, in the light of all the circumstances, or (ii) the method is proven in fact to have fulfilled the functions above, by itself or together with further evidence.

Filing and registration requirements

There are no requirements for registration for electronically signed documents. However, electronically signed documents may be accepted for company filings (documents administered by the Accounting and Corporate Regulatory Authority, Singapore's regulator for business entities), intellectual property, and security and tax filings.

Electronically signed documents may be accepted for certain categories of real estate filings if the document in question is not an Excluded Matter under the ETA. Please refer above for the list of Excluded Matters.

Admissibility in court

E-signatures are enforceable and admissible in court. However, where the e-signature is a "secure electronic signature", it will have the same presumption of enforceability as a "wet signature". This advantageous legal presumption shifts the burden of proof onto the counterparty and will therefore, be harder to challenge in the event there is a dispute over the validity of the signature.

Generally, an electronic signature will be a "secure electronic signature" if it is affixed onto a document via the application of a specified or commercially reasonable security procedure agreed by parties. Further, it must be verified that the electronic signature is:

- unique to the person using it;
- capable of identifying such person;
- created in a manner or using a means under the sole control of the person using it; and
- linked to the electronic record to which it relates in a manner such that if the record was changed the electronic signature would be invalidated.



Governing legislation	Electronic Transactions Act of B.E. 2544 (2001) (the “ETA”), as amended.
Regulatory authority	Office of the Electronic Transactions Commission.
Definition of electronic and digital signature	<p>Under the ETA, “electronic signature” means letter, character, number, sound or any other symbol created in electronic form and affixed to a data message in order to establish the association between a person and a data message for the purpose of identifying the signatory who is involved in such data message and show that the signatory approves the information contained in such data message.</p> <p>In the Electronic Transactions Development Agency (“ETDA”) Recommendation on ICT Standard for Electronic Transactions, a “digital signature” is defined as “the result of a cryptographic transformation of data that, when properly implemented, provides a mechanism for verifying origin authentication, data integrity and signatory non-repudiation” the same as the defined term in the National Institute of Standards and Technology Federal Information Processing Standards Publication 186-4, “Digital Signature Standard (DSS)”.</p>
Similarities and differences between electronic and digital signatures	The ETA only provides the very broad definition of the electronic signature in which a digital signature is one of the many ways of a valid electronic signature.
Circumstances where electronic signatures can be used	<p>According to the ETA, the valid electronic signature is technology neutral which means that any particular method which meets the criteria can be recognised as a valid electronic signature. Section 9 of the ETA provides broad principles that documents shall be deemed electronically signed if:</p> <ul style="list-style-type: none">• a method used for signing the document can identify the signatory and signatory’s approval of information contained in the data message. In this regard, a method that can identify signatory’s approval of information refers to a method that represents the intention of the signatory to be bound by the agreement or to certify the information. For example, the manner in which the signatory logs into the system by using a username and password to execute his electronic signature in the concerned transaction can be used to demonstrate the signatory’s intention to approve the information of the transaction; and• such method possesses the following qualification:<ul style="list-style-type: none">o being a reliable method that is appropriate to the objectives of the generation or delivery of the data message considering surrounding circumstances and relevant agreements; oro being another method that can, independently or with the presentation of related evidence, identify the signatory and signatory’s approval of information contained in data message. Such related evidence could be any evidence that can identify the signatory and can evidence that such signatory actually provides his electronic signature. The possible evidence may include having the electronic signature certified by a certification authority. <p>The electronic signature that meets the above criteria shall be recognised as valid and can be enforced, be used in Thailand and be adduced as an evidence in court as clearly stated in Section 7 and Section 11 of the ETA. It is stipulated that the information and admissibility of data messages as an evidence in the legal proceedings must not be denied solely on the ground that they are in an electronic form.</p> <p>There is no provision limiting the manner for signing using e-signature. However, the use of e-signature, in practice, have some limitations by nature of the transaction. The limitation of the use of e-signature can be classified into three types as described below:</p> <p>Prohibited by the law</p> <p>The ETA will not apply to transactions regarding family and succession under the Thai Civil and Commercial Code e.g. registration of legitimation of child, will, marriage registration etc.</p> <p>Limited by the government agency practice</p> <p>Although the ETA may allow the use of e-signature, without sub-regulation or guideline in regard to e-registration by the relevant government agencies, the use of e-signature is limited e.g. registration of land sale and purchase is not possible.</p> <p>Limited by the nature of the transaction</p> <p>Certain transactions, by its nature, requires the original signature of parties and face-to-face appearance e.g. legalisation or notarisation, etc. so they are not allowed to use the e-signature until a formally approved method is initiated.</p> <p>In general, except for the aforesaid, the use of e-signature can be used and shall be valid and enforceable on the parties.</p>
Types of documents included and excluded	<p>The ETA will not apply to family and succession transactions under the Thai Civil and Commercial Code e.g. registration of legitimation of child, will, marriage registration etc.</p> <p>The ETA provides that any transaction that is required to be made in writing or evidenced by writing or supported by a document which must be produced, if the information is generated in the electronic form which is accessible and usable for subsequent reference without its meaning being altered, it will be deemed that such information is already made in writing.</p>

Enforceability	<p>As the ETA provides that the information shall not be denied legal effect and enforceability solely on the ground that it is in the form of electronic signature. Therefore, as long as the requirements under Section 9 or Section 26 are met, the electronic signatures are legally enforceable in Thailand.</p>
Filing and registration requirements	<p>The recognition of electronically signed documents are still limited as it depends on the specific requirements of each registrar.</p> <ul style="list-style-type: none"> • Company filings: No, electronically signed documents are not accepted for filing. As of now, any application or registration with the Department of Business Development must be signed with wet ink signature for any paper filing. The e-filing system still requires scanned copies of wet-ink documents such as the submission of audited financial statements, etc. • Real estate: No. Instruments dealing with Department of Lands must be signed with wet ink signature. • Intellectual property: No, the e-filing system still requires scanned copies of wet-ink documents. • Security related filings: Yes, if the system supports e-filing which may be limited to certain transactions only. • Tax filings: Yes, if the system supports e-filing which may be limited to certain transactions only.
Admissibility in court	<p>As long as the requirements under Section 9 or Section 26 are met, the electronic signatures are admissible as evidence in Thai courts.</p> <p>For the reliable electronic signatures under Section 26, it generally carries a higher evidential weight than general electronic signatures. The burden of proof of validity of e-signatures is imposed on the party seeking to rely on it.</p>



Governing legislation	<ul style="list-style-type: none">• The Law on electronic transactions 2005 (“Law on E-transaction”)• Decree 130/2018/ND-CP (“Decree 130”)
Regulatory authority	Ministry of Information and Communications.
Definition of electronic and digital signature	<p>Under the Law on E-transaction, an electronic signature shall be:</p> <ul style="list-style-type: none">• created in the form of words, script, numerals, symbols, sounds or in other forms by electronic means, logically attached or associated with a data message; and• shall be capable of certifying the person who has signed the data message and certifying the approval by such person with respect to the content of the signed data message.
Similarities and differences between electronic and digital signatures	<p>Under Decree 130, a digital signature is a form of electronic signature created by the transformation of a data message using an asymmetric cryptography in which those who have initial data messages and the public key of the signer can be determined exactly:</p> <ul style="list-style-type: none">• the above transformation is created by the correct private key corresponding to public key in the same key pair; and• the integrity of the content of data messages since the implementation of the mentioned above transformation. <p>In general, under the Law of Vietnam, digital signature is one transformation of electronic signature.</p>
Circumstances where electronic signatures can be used	<p>Electronic signature can be used in several circumstance including but not limited to:</p> <ul style="list-style-type: none">• by parties to an electronic transaction;• used by agent, organisation as means to replace traditional stamp.
Types of documents included and excluded	<p>Types of documents that can be electronically signed include (but not limited to):</p> <ul style="list-style-type: none">• contract• e-contract• e-receipt
Enforceability	The Law on E-transaction stipulates that the Government recognises the legal validity of foreign e-signatures if such e-signatures have the same level of reliability as those provided by law.
Filing and registration requirements	<p>There is no specific requirement for registration however, for an electronic signature to be accepted by law, such signature is required to satisfy all of the following conditions:</p> <ul style="list-style-type: none">• e-signature creation data are attached only to the signatory in the context that such data are used;• e-signature creation data are under the control of only the signatory at the time of signing;• all changes to the e-signature after the time of signing are detectable; and• all changes to the contents of the data message after the time of signing are detectable.
Admissibility in court	Generally, e-signature could be admissible in court, however, in many cases the courts have taken a conservative approach to e-signature.

KEY DEVELOPMENTS IN THE PAST YEAR

CAMBODIA

With the enactment of the E-Commerce Law, there have been many discussions on the use of e-signatures, particularly the recognition of e-signatures. Although the Law stipulates that e-signatures are valid, the Law is also silent and vague on how to guarantee that an e-signature will be recognised in a commercial transaction, by governmental institutions and the court. There have also not been any subsequent and supplemental regulations to clarify this issue.

In particular, this issue has been a challenge to the banking and financial sectors; especially regarding the opening of bank accounts. Currently, in order to open an account, the applicant would need to be physically present at the bank to sign a number of documents, for the purposes of verifying the applicant's identity and compliance

with KYC procedures. Although the National Bank of Cambodia, the competent authority governing the banking sectors in Cambodia, has announced their recognition of e-KYC in Cambodia, there has yet to be any written regulations issued to administer and regulate the procedure of e-KYC and the use of e-signatures.

On another note, considering the current global pandemic, where cross-border travelling is difficult, restrictive and scarce, many are hesitant in using e-signatures in commercial transactions, government institutions and court documents as a binding symbol of the document, and still prefer or require physical signing or wet-ink signatures.

INDONESIA

As the number of COVID-19 cases continues to increase, certain health protocols have resulted in restriction/limitation of movements.

Many have resorted to attending virtual meetings and when possible, signing private agreements by using electronic/digital signatures.

LAOS

The recently promulgated Decision on the Operation of Electronic Signature Business No. 1101/MPTC dated 29 May 2020 provides guidance on how operators can register their business and acquire

the relevant licenses to operate as electronic signature certificate authorities in Lao PDR.

MALAYSIA

Despite the ECA recognising e-signatures, these are some of the practical problems faced by real estate and banking & finance practitioners during the pandemic:

- prior approval for the use of e signatures would have to be obtained from the stamp office or the document may not be accepted for stamping.
- e-signatures are not recognised for statutory forms under the Malaysian National Land Code and the execution of such forms must be by wet ink signature.
- the existing procedure for the execution of certain real estate and banking & finance documents is that a witness must be physically present to observe the signatory append his/her signature to the document.

Currently, there is no video function technology integrated into leading e-signing platforms. This is not a solution where face-to-face witnessing is not feasible due to the lockdown. The issue with this is how to get a third party witness who is authorised under the National Land Code to witness the execution during a lockdown when travel and is restricted, offices are closed and social distancing is enforced. As pandemics and lockdowns become a part of our new normal, the issue of execution of hard copy documents and the attestation of the same must be resolved in order for business and banking to continue without interruption.

PHILIPPINES

Lobbying of creating guidelines for electronic practice of notarisation.

SINGAPORE

The IMDA issued a consultation paper on 27 June 2019 to review the ETA.

- In summary, the IMDA is seeking to broaden the applicability of the ETA by removing all documents and transactions in the Excluded Matters for most business related transactions, while retaining personal or familial transactions, which would require greater safeguards.
- The consultation period closed on 27 November 2019. As at the date of this publication, the IMDA has yet to provide an update on the outcome.

In view of the COVID-19 pandemic, the adoption of e-signing is gaining more traction. While such technologies can facilitate transactions for businesses, they are prone to electronic risks - may be tampered, modified or forged. Potential implications:

- having more stringent legislative and/or regulatory regimes
- advocating for the preferred use of secure electronic signatures.

THAILAND

Over the years, Thailand has been characterised by its ability to adapt to upcoming developments in the digital sector which has made it an attractive investment destination for multinationals and start-ups alike. Part of this has been the willingness of Thai policy-makers especially the Ministry of Digital Economy and Society to accommodate new and innovative digital trends and methods. With regard to electronic signatures, the previous ETA stipulated that anyone who inputs an electronic signature is required to certify that the content of the electronic message is indeed their own. However, the revisions made to the ETA in 2019 has now indicated

that an electronic signature can be signed without the need to verify all the contents of the electronic data, such as in the case where the signatory acts as a witness. Therefore, the amended version of the ETA broadens the definition of an electronic signature wherein signatories do not necessarily agree to the terms indicated in the electronic message, meaning they can simply sign as witnesses rather than being party to the conditions listed therein. The ETDA also released ETDA Recommendation on ICT Standard for Electronic Transactions focusing on electronic signature in 2020.

ZICO LAW ASEAN NETWORK CONTACTS



Rozaiman Abdul Rahman
Managing Partner
ZICO R.A.R
rozaiman.ar@zicolaw.com
t. +673 223 2929



Matthew Rendall
Partner
SokSiphana&associates
matthew.rendall@zicolaw.com
t. +855 23 999 878



Afriyan Rachmad
Partner
Roosdiono & Partners
afriyan.rachmad@zicolaw.com
t. +6221 2978 3888



Jade Hwang Poh Geok
Partner
Roosdiono & Partners
poh.geok.hwang@zicolaw.com
t. +6221 2978 3888



Aristotle David
Managing Partner
ZICO Law Laos
aristotle.david@zicolaw.com
t. +856 21 410 033



Tuchakorn Kitcharoen
Senior Associate
ZICO Law Laos
tuchakorn.kitcharoen@zicolaw.com
t. +856 21 410 033



Nadarashnaraj Sargunaraj
Partner
Zaid Ibrahim & Co.
nadarashnaraj@zicolaw.com
t. +603 2087 9999



Geraldine Oh
Resident Partner
ZICO Law Myanmar
geraldine.oh@zicolaw.com
t. +95 1 538 362



Felix Sy
Managing Partner
Insights Philippines Legal Advisors
felix.sy@insights-law.com
t. +63 2 903 1290



Yap Lian Seng
Managing Director
ZICO Insights Law
lian.seng.yap@zicolaw.com
t. +65 6443 4920



Heng Jun Meng
Director
ZICO Insights Law
jun.meng.heng@zicolaw.com
t. +65 6443 4920



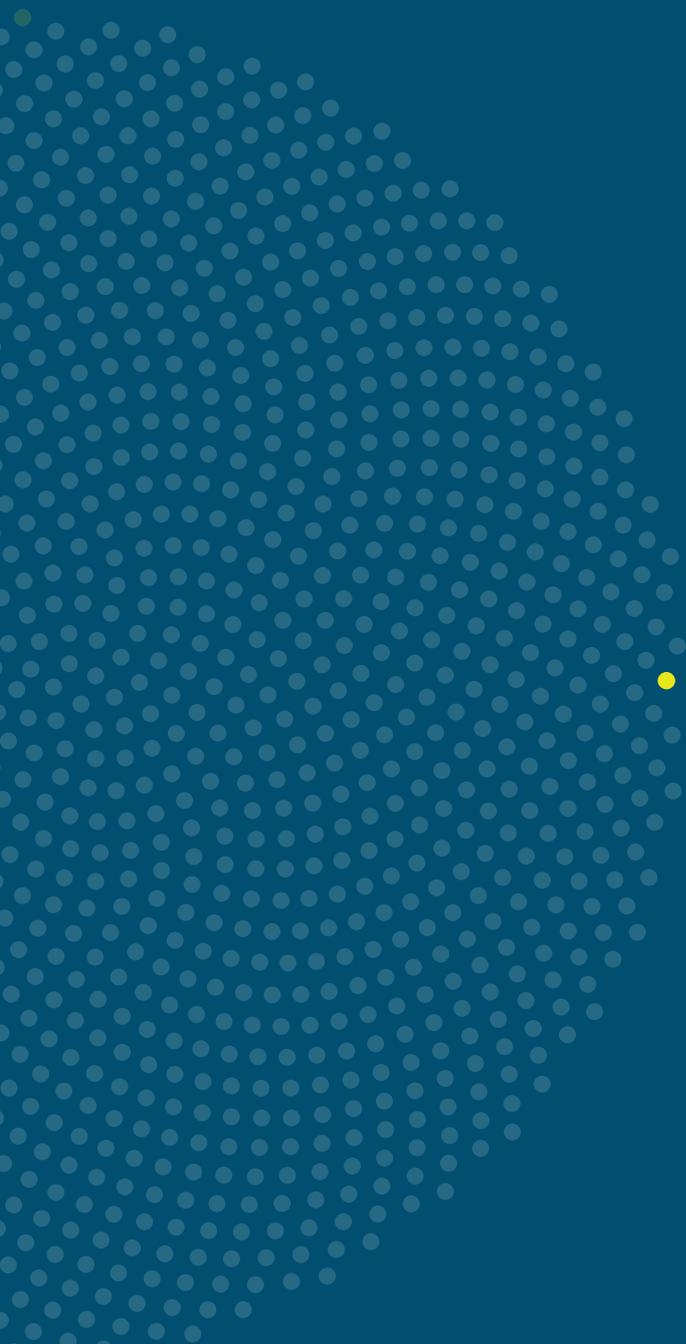
Nuttaphol Arammuang
Managing Partner
ZICO Law Thailand
nuttaphol.a@zicolaw.com
t. +66 2 6777 588



Archaree Suppakrucha
Partner
ZICO Law Thailand
archaree.suppakrucha@zicolaw.com
t. +66 2 6777 588



Tay Zi Li
Co-Executive Partner
ZICO Law Vietnam
zi.li.tay@zicolaw.com
t. +84 28 3915 1000



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