

Electronic Evidence Fiche: VIET NAM

1) DEFINITIONS

Viet Nam
What are the definitions in your laws/regulations, if any, of:
Electronic evidence
<p>There is no explicit definition of the term “electronic evidence”. Article 99 of the Criminal Procedure Code (2015, revised in 2017) provides the following on “Electronic Data”:</p> <ol style="list-style-type: none"> 1. Electronic data is composed of symbols, letters, numbers, images, sounds or similar elements created, stored, transmitted or received by electronic devices. 2. Electronic data may be collected from electronic devices, computer networks, telecommunications networks, transmission lines and other electronic sources. 3. The evidentiary value of electronic data shall be determined based on: methods of their creation, storage or transmission; methods of securing and maintaining their integrity; methods of identifying creators and other appropriate elements. <p>According to Article 87 1 c) of the Criminal Procedure Code, electronic data is recognized as a source of evidence.</p>
Computer system
<p>There is no specific definition of “computer system”. However, the Law on E-Transactions (2005) defines the following terms:</p> <p>An information system is “a system established for sending, receiving, storing, displaying or implementing other processing with respect to data messages” (Article 4 sec. 8).</p> <p>An electronic means is “a means that operates based on electric, electronic, digital, magnetic, wireless, optical, electro-magnetic technologies or similar technologies” (Article 4 sec. 10).</p> <p>An electronic data interchange (EDI) is “a transfer of information from one computer to another computer by electronic means in accordance with agreed standards on information structure” (Article 4 sec. 15).</p>
Computer data
<p>There is no explicit definition of the term “computer data”. Article 4 sec. 5 of the Law on E-Transactions (2005) defines the term “data” as “the information in the form of symbol, writing, number, image, sound or other similar formats”.</p>

Categories of computer data (e.g. basic subscriber information, traffic data and content data)

There is no specific definition.

Electronic surveillance or real-time collection of computer/communication data

There is no specific definition.

Service provider (e.g. ISP, hosting)

Article 4 sec.14 of the Law on E-Transactions (2005) states that “a network service providing organization is an organization providing infrastructure for transmission lines and other relevant services to carry out e-transactions. Network service providing organizations include organizations providing Internet services and organizations providing network access services.”

2) DATA RETENTION REGIME

Viet Nam

Do you have any domestic laws that stipulate a mandatory retention period of electronic data? If so, for what types of data and for how long?

The regime depends of the type of electronic data, the sector (private or public) and the fields in which the data is utilized. For instance, in accounting, electronic documents (Article 17 of the Law on Accounting - Decree 174/2016/NĐ-CP) must be kept for 5, 10 or no dead-end periods. In the banking industry, the retention period for electronic data can be 5, 10, 15 or 20 years depending on the type of electronic documents (Circular 22/2021/TT-NHNN 29/12/2021).

3) ADMISSIBILITY OF ELECTRONIC EVIDENCE IN THE CRIMINAL TRIAL

Viet Nam

What is the requirement under your domestic law for electronic evidence to be admissible in a criminal trial?

According to Article 108 of the Criminal Procedure Code (2015, revised in 2017), in order to be admissible in a criminal trial, electronic evidence must satisfy the following general requirements:

- Validity (legally obtained) – similar to the exclusionary rule;
- Relevance (connection with the case);

- Integrity (not interfered with by outer factors).
Specifically, it must comply with the criteria of “authenticity”; the process of collecting electronic data must be strictly followed (Article 107 of the Criminal Procedure Code).

4) RECEIVING REQUESTS FOR ELECTRONIC EVIDENCE FROM OTHER STATES

4.1. Direct requests from foreign authorities to service providers

4.1.1. Requests for preservation

Viet Nam
What legal framework(s) is/are applicable, if any?
Not stipulated in the laws/regulations of Viet Nam.
Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?
Not stipulated in the laws/regulations of Viet Nam.
If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?
Mutual legal assistance or police-to-police cooperation are the only channels available.
Is a judicial order required from the requesting state?
Not stipulated in the laws/regulations of Viet Nam.
Are there any time limits for data preservation? Any possibility of extension?
Not stipulated in the laws/regulations of Viet Nam.
Would service providers in your country notify the data subjects of the request?
Not stipulated in the laws/regulations of Viet Nam.

4.1.2. Requests for voluntary disclosure

Viet Nam
What legal framework(s) is/are applicable, if any?
Not stipulated in the laws/regulations of Viet Nam.
Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?
Not stipulated in the laws/regulations of Viet Nam.
If they are prohibited or if there are limitations, are there any alternative options to obtain the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?
Mutual legal assistance or police-to-police cooperation are the only channels available.
Is a judicial order required from the requesting state? Are there any time limits?
Not stipulated in the laws/regulations of Viet Nam.
Would service providers in your country notify the data subjects of the request?
Not stipulated in the laws/regulations of Viet Nam.
How can the process be simplified or quickened in emergency situations?
Informal channels could be used in order to accelerate the process.

4.2. Requests received by your central authority for **Mutual Legal Assistance (MLA)**

Viet Nam
How do you execute MLA requests for electronic evidence stored by domestic service providers (e.g. through a domestic court order or a search warrant)?
The domestic competent authority (investigation agency) sends the request to the domestic service provider. It is the responsibility of the service provider to collaborate with the law enforcement agencies to provide the information. They need

to provide a reasonable explanation if they cannot provide the requested information (Article 5, para. 4 of the Criminal Procedure Code).

The court does not have the power/authorization to issue a search warrant. It can request the investigation agencies to issue a search warrant. The power to issue a search warrant is with the investigation or procuracy authorities. In order to make the search warrant effective and applicable, it is required to have it ratified by a prosecution agency (Article 36, para. 2 and Article 41, para. 2, point g of the Criminal Procedure Code).

Can you provide assistance in real-time collection of non-content and/or content data (e.g. through electronic surveillance) upon the receipt of a MLA request? If yes, are there any limitations or conditions (e.g. limited to certain crime types or penalties thresholds)?

There is no such possibility.

What are the central and competent authorities in your country to:

- a) Receive a request for MLA in criminal matters?**
- b) Execute/recognize the measure (if other than the receiving authority)?**

The responsibilities of the Central Authority (the Supreme People's Procuracy) are stipulated in Article 64 of the Law on Mutual Legal Assistance (2007):

1. To receive, send, monitor and urge the execution of requests for mutual legal assistance in criminal matters; to consider and decide on the execution of such requests, and ask the competent People's Procuracies or investigation agencies to execute requests for mutual legal assistance in criminal matters; to refuse or postpone the execution of requests for mutual legal assistance in criminal matters.
2. To exercise the prosecution and supervision of mutual legal assistance activities according to its competence.
3. To guide the People's Procuracies at all levels on how to provide mutual legal assistance in criminal matters.
4. To propose the conclusion of, accession to, and implementation of treaties on mutual legal assistance; to propose amendments, supplements to, and improvement of Vietnamese legislation on mutual legal assistance.
5. To biannually and annually inform the Ministry of Justice on the execution of requests for mutual legal assistance in criminal matters.

What are the accepted languages for MLA requests?

The accepted language is Vietnamese, except otherwise mentioned in a treaty (Article 5 of the Law on Mutual Legal Assistance).

Can the request be submitted electronically to the central authority?

Yes, but a hard copy is also required.

Can the request be submitted directly to the central authority?
Yes, but only if the request is based on a treaty. Otherwise, requests shall be submitted through diplomatic channels.
What are the specific requirements (e.g. dual criminality, minimum penalty thresholds, etc.) that the requesting states have to meet under your domestic laws for MLA requests seeking for the provision of electronic evidence?
<p>General requirements apply for electronic evidence requests as well and they are stipulated in Articles 19 and 21 of the Law on Mutual Legal Assistance (2007). The execution of requests for mutual legal assistance in criminal matters shall be refused if:</p> <ul style="list-style-type: none"> a) They are not in conformity with treaties to which Viet Nam is a party or with Vietnamese law; b) They could jeopardize national sovereignty or security; c) They are related to the examination of criminal liability of a person for a criminal conduct for which he/she was convicted, declared unguilty or granted general or special amnesty in Viet Nam; d) They are related to criminal conducts for which the statute of limitations has expired according to Viet Nam's Penal Code. e) They are related to law violations that do not constitute a criminal offence under Viet Nam's Penal Code. <p>The execution of requests for mutual legal assistance in criminal matters may be postponed if it obstructs the process of investigation, prosecution, trial or enforcement of a judgment in Viet Nam.</p>

5) REQUESTING ELECTRONIC EVIDENCE ACROSS BORDERS

5.1. Direct requests to foreign service providers

5.1.1. Requests for preservation

Viet Nam
What legal framework(s) is/are applicable, if any?
Not stipulated in the laws/regulations of Viet Nam.
Which authority(ies) in your country is/are allowed to request data preservation to foreign service providers?
Not stipulated in the laws/regulations of Viet Nam.

If the requested foreign service providers are prohibited or limited to preserve the data, are there any alternative options to preserve the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?

The options are mutual legal assistance and police-to-police cooperation.

Can a court order or a search warrant be issued for data preservation by foreign service providers? If not, what are the reasons?

It depends on the requirements of the foreign states where the service providers are located. In Viet Nam, the court does not have any powers of investigation. When the court wants to obtain any piece of information or evidence, it must request the prosecution or investigation agency to do that.

5.1.2. Requests for voluntary disclosure

Viet Nam

What legal framework(s) is/are applicable, if any?

Not stipulated in the laws/regulations of Viet Nam.

Which authority(ies) in your country is/are allowed to request data disclosure to foreign service providers?

Not stipulated in the laws/regulations of Viet Nam. Official channels are normally used to obtain evidence or request any other matters than preservation.

If the requested foreign service providers are prohibited or limited to voluntarily disclose the data, are there any alternative options to obtain the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?

The options are mutual legal assistance and police-to-police cooperation.

Can a court order or a search warrant be issued for data disclosure by foreign service providers? If not, what are the reasons?

It depends on the stage of the criminal proceedings.

5.2. Requests sent by your central authority for **Mutual Legal Assistance (MLA)**

Viet Nam

What is your central authority to send requests for MLA in criminal matters?

The central governmental authority responsible for mutual legal assistance in criminal matters is the Supreme People's Procuracy of Viet Nam according to Article 493 of the Criminal Procedure Code (2015, revised in 2017).

Are informal contacts with the central authority of the requested states allowed and used?

Yes, for instruction or exchange of information only before issuing an MLA request.