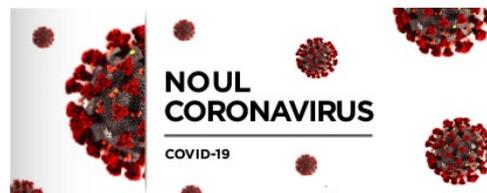


POST COVID-19 BUSINESSES: THREE STEPS FOR THE MIGRATION ONLINE



If you have ever sold products by phone or your website, have used payment terminals or internet banking, or have delivered products or services through social networks (facebook, instagram, etc.) then most likely you did e-commerce. Covid-19 has shown almost everyone that it's time for businesses to have an online presence.

Although not a novelty, e-commerce has particularities and requirements that must be taken into account. The sanctions for not observing these requirements may entail pecuniary fines or even the temporary shutdown of the business operation. Below we have described three most important aspects to consider when "uploading" the business and the employees online

➤ The website or how do to migrate online?

The mere website creation and displaying the goods for sale is not sufficient for legal trade. Beside registration with the Public Services Agency, in accordance with the State Registration Law 220/2007, it is also necessary to notify the initiation of trade activity to the local public administration authority, in accordance with the Internal Trade Law 231/2010.

Another (new) notification to the local public authority is necessary only when businesses are selling exclusively or in mainly through the Internet, as they fall into the class 47.91 "Retail trade by mail or Internet", in accordance with the Classifier of Activities in the Moldovan Economy approved by the Order of the National Statistics Bureau 28/2019. For this case, the local tax for 2020, in Chisinau, shall be of MDL 10,000.

Generally, the website of any trader shall contain:

- (1) information on cookies, the categories of data required mandatorily for such online monitoring and the manner of expressing the consent;
- (2) information of the customers with authentic data on the trader, comprising mainly: (a) *the full name, including the form of legal organization; (b) the state identification number; (c) legal address, e-mail address of the person, contact telephone number; (d) the number and period of validity of the authorization (if authorization is required to carry out the activity), as well as the name of the public administration authority that issued the authorization; (e) the VAT code; (f) data on the conditions of dispatch, as well as the prices of the goods for sale, the tariffs for the works to be performed or the services to be provided; (g) the contact telephone number and address of the official website of the Agency for Consumer Protection and Market Surveillance; (h) the prices of goods, the tariffs for works or services, including discounts* - we note that the indication of prices by sending it through a private message is a breach of this legal requirement - and other data specified in Article 12 of the Electronic Trade Law 284/2004;
- (3) the terms and conditions for the protection of personal data, including in particular (a) *the registration number as a personal data operator;¹ (b) the categories of information collected from the consumer, the purpose for which they are collected and the way in which the personal data are processed; (c) the rights of the consumer as a subject of personal data, in particular the right to intervene and to oppose, the exercise of those rights; (d) the cases in which personal data may be disclosed to third parties;* and other data specified in Article 10 of the Electronic Trade Law 284/2004;
- (4) data on the technical steps and other information related to the electronic contract, including clearly and legibly (and in any case not later than at the beginning of the order formulation process) if any delivery restrictions apply and what are the means of payment accepted - for details, see the third section of this article "*The electronically signed contract or how is the transition" on paper "in the online space?"*

¹ The registration as a personal data operator is carried out by the National Personal Data Protection Center, in accordance with the Personal Data Protection Law 133/2011.

➤ **Data security and confidentiality or how to set the employees obligations?**

During the Covid-19 period, a considerable number of employees work from home.² Under the conditions of maintaining physical distancing, it is possible that this method will continue to be applied, especially by those who practice online commerce.

As such, we note that regardless of whether employees work remotely or return to their main workplace, the obligation to ensure the protection of personal data in the online commerce rests is on economic agent. Thus, the employer must comply, among others, with the following rules:

- (1) on the personal data protection, namely (a) to approve the security policy on the personal data protection; (b) to approve the regulation on the system of records in which personal data collected through the website or online trading platform are processed; and (d) to designate the responsible person for the protection of personal data;
- (2) on the clear establishment of the employee's obligations, in the individual employment agreement or in the additional agreement to it. These may include: (a) handover-receipt clauses for the computer technology - if the employee uses the technical equipment provided by the employer to perform the work at home; (b) rules and requirements for the use of computer technology, in order to ensure the confidentiality and security of personal data (e.g. prohibition to storage the information on external media, disclosure of confidential information to the public, personal data selling, setting passwords to documents or directories with sensitive information, security standards for the wi-fi networks, etc.); (c) the obligation to use the office e-mail addresses or applications that have servers or belong to developers with the legal address in the Republic of Moldova or European Union countries (this can be generally verified in the terms and conditions of the applications).

Even in case of using online social network platforms for carrying out the commerce, the economic agent shall ensure protection under the conditions of the Moldovan laws.

➤ **The electronically signed contract or how do the "paper agreements" exist online?**

Although the number of electronic documents is smaller than those on traditional paper, both have the same evidentiary value. In the Covid-19 context, as well as later, the traders can adapt the business using electronic documents.

A contract concluded by electronic means consists from the offer and acceptance. It is clearly not an exchange of ink-signed scan copies between the parties. In e-commerce, a contract can be concluded in 2 ways:

- (1) in the form of an electronic contract, being signed with one of the 3 types of electronic signatures provided by law, namely:
 - simple, which does not refer exclusively to the signatory;
 - advanced nonqualified, which is created exclusively by the means of the signatory, and makes exclusive reference, allowing his identification;
 - advanced qualified, which is based on a public key certificate issued by an accredited service provider, is created through a secure device and has the same legal value as the handwritten signature. A practical example of applying the qualified advanced signature is the use of the mobile signatures from Moldcell and Orange (point 5.3 of the [Special Conditions](#)) through the [Msign](#) website or [MoldSign](#) application.
- (2) in another form, using electronic means, for example by the *click-wrap* method or (commonly known) the acceptance of the Terms and Conditions. This method is widespread and is based, on the one hand, on the offer to contract, materialized through the form of the Terms and Conditions which contain data on price, payment method, warranty, delivery, liability, confidentiality and data protection, and, on the other hand - the acceptance, materialized (usually) by a click through which the buyer confirms that it accepts the Terms and Conditions.

² For details on working from home during the state of emergency period, please see [PRACTICAL LEGAL SOLUTIONS FOR EMPLOYERS AND EMPLOYEES IN THE EMERGENCY PERIOD](#)

If the seller chooses to place an order (i.e. to conclude a contract) according to the 2nd method, it shall further observe: (a) that before the offer is accepted, it shall provide information on: the technical steps to be followed to conclude the contract; whether a document representing the contract will be generated and whether the document will be accessible; the technical means for identifying and correcting errors made in entering data before the other party accepts the offer; the languages in which the contract may be concluded; and other contractual clauses; and (b) to confirm, without undue delay, by electronic means, the receipt of the order information, including the acceptance or rejection of the placed order.

For instance, after receiving the order, the economic agent may send a notification to the e-mail address / mobile phone number indicated by the buyer, or inform him immediately after placing the order by displaying on the web page, information on the option to save the displayed data / information order, and, if the case may be, to print it on paper.

In addition, the contract concluded by electronic means, which obliges the consumer to pay any amount of money, requires the economic agent to inform the consumer clearly and visibly, immediately and prior to him placing the order: (1) of the main characteristics of the goods or services; (2) of the total price of the goods or services with all taxes included or, if the cost cannot be reasonably calculated in time given the nature of the goods or services, the method of calculating the price and all additional transport costs, delivery, postage or any other charge or, if they cannot be reasonably calculated in advance - a mention that these additional costs could be borne by the consumer; (3) of the duration of the contract or, if the contract is concluded for an indefinite period or is to be renewed by right, the conditions of termination (as the case may be); and (4) of the minimum duration of validity of the obligations incumbent on the consumer under the contract (as the case may be).

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