



VOKSHI & LATA
LAW FIRM

E-COMMERCE

LEGAL GUIDE TO INVESTING IN KOSOVO



12. E-COMMERCE

In the current wave of e-commerce around the world, many fraudulent individuals or businesses are appearing. This creates a loss of consumer confidence in online shopping and thus harms serious businesses that offer the original products according to customer requirements. Thus legal regulations in e-commerce are vital to protect consumers from fraudulent actors, maintain their confidence in online shopping, and ensure the sustainability of reputable businesses that deliver authentic products as per customer expectations.

E-commerce-related issues are regulated by Kosovo's several different laws and regulations, which are in line with EU regulations. The main Legal regulations are:

- Law No 04/L-094 on Information Society Services (Law on Information Society Services)
- Law No 60/L-034 on Consumer Protection (Law on Consumer Protection)
- Law No 08/L-022 on Electronic Identification and Trust Services in Electronic Transactions (Law on Electronic Identification)
- Law No.06/L-082 on Protection of Personal Data (Law on Data Protection)

This set of legislation deals with several matters in relation to E-commerce such as the obligation of information, electronic invoicing and payment and electronic identification.

12.1. OBLIGATION OF INFORMATION

Some important documents for E-commerce businesses in regard to contracts are:

- Terms and Conditions
- Privacy Policy
- Guide to Withdrawal from Contract
- Withdrawal form from the contract
- Confirmation of order for the buyer
- Cookie Policy

Terms and Conditions are the contents of the terms on which the parties agree in respect of their transaction. Customers must agree to the terms and conditions in order to make purchases from the E-commerce platform. There are two ways in which the consumer's consent is obtained: in each case of purchase or when opening an account.



Terms and conditions must contain information on who can make a purchase and the conditions that the buyer must meet (e.g. Age restrictions for making the purchase as well as determining whether the sale is only made to the last customer or even to resellers)

All information that the trader must provide for distance contracts, prior to contracting, must be included.

The language used in the terms and conditions and other parts of the Website must be clear and understandable.

In addition to the information included in the terms and conditions, the trader must provide other information on the website, in particular during the selection and when the consumer places his order. For each product, the trader must provide clear information on the characteristics of the product. The customer must also clearly be informed that the order implies an obligation to pay. If placing an order entail activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words ‘order with obligation to pay’ or a corresponding unambiguous formulation.

Disposition from the Law on Consumer Protection on the sale price and the unit price apply. If the price cannot be calculated, the trader must provide complete information on the way the price is calculated, including costs of transportation, postal fees, and other expenses.

Dispositions of the Law on Consumer Protection on the confirmation of distance contracts, right of withdrawal, delivery and invoices apply (Cf. Section 11.5).

Regarding the deadline within which the consumer has the right of withdrawal, the Law on Information Society Services previously set a deadline of “at least” 7 days. However, Law on Consumer Protection later provided a 14 days period.

Privacy policy: When shopping online, businesses collect personal data from customers such as: name and surname, delivery address of the goods, telephone number, bank account, notes for bank card, etc. In this regard, businesses should be extremely careful about the legality of the collection and processing of the data. The Law on Protection of Personal Data foresees fines up to 40,000 euros or 2% to 4% of the general turnover of the previous fiscal year in accordance with GDPR. Businesses should therefore compile their Privacy Policy in accordance with legal provisions in order to notify consumers about personal data collected, the manner of processing, the legality of the processing, the right to delete these data and other rights guaranteed by law (**cf. 13. Data Protection**)

Cookies Policy: This important document also relates to the protection of personal data of consumers. It is sometimes included in the Privacy Policy but often is a separate and distinct document. Websites collect cookies set by users during access and navigation to the website. Some of these cookies are essential while others are alternative. They are used to better identify the user as well as to understand his access for marketing purposes. When collecting data (cookies) from users, consent must be obtained. The notice of giving consent should be clear and understandable. Users should be left the possibility to consent only to certain cookies (necessary) or to all the cookies. Users should also have the option of not giving consent to the collection of cookies.

12.2. INFORMATION SOCIETY SERVICES

Information Society services are any service provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. This includes for example services such as social networks, booking services, on-demand video services, gaming apps, web hosting, etc.

This, for example, does not include:

- services which, even though they may require the use of electronic devices, are not performed at a distance, such as medical examination or treatment, automatic cash, car parks;
- services not provided via electronic means, such as services provided by telephone or fax;
- services not provided at individual request, such as radio or television broadcasting, etc.

The service provider should offer, in an easy and accessible way, its name, address, details (including email and URL), trade registration details, VAT tax number. If the activity of the provider is subject to authorisation or for regulated professions, additional information is required, such as the supervisory authority or the professional body or institution.

All commercial communications part of an information society service must be clearly identified as such. Must also be identified, the natural or legal person on whose behalf the commercial communication is made, the promotional offers, competitions or games and their conditions.

In regard to contracts concluded by electronic means, the Law on Information Society Services also specifies that, unless agreed differently by the parties who are not consumers, the recipient must be informed:

- prior to the contract of the technical steps for the conclusion of the contract; the eventual filing of the contract by the provider and its accessibility; the means for identifying and correcting input errors prior to the placing of the order; the languages offered for the conclusion of the contract;
- if existing, any codes of conduct to which the provider subscribe and how to consult them electronically.

This obligation of information does not apply to contracts concluded exclusively by exchange of electronic mail or individual communications. The same law also states that contract terms and general conditions must be made available in a way that the recipient can store and reproduce them.

12.3. ELECTRONIC INVOICING AND PAYMENT

Details included in electronic invoicing are set by the Law on Information Society. This includes the date of issue; a sequential number; The VAT no. (if applicable); the name and address of the taxable person and customer; quantity; price; and nature of the goods or services; the date of supply of goods or completion of service or of payment on account (if a date can be determined and differs from the date of invoice); the taxable amount, the unit price exclusive of tax, any discounts not included in the unit price, the rate of VAT applied; the amount of VAT to be paid.

It is not obligatory to sign the invoice.

Invoices may be sent on paper, or, subject to an acceptance by the customer, by electronic means. Authenticity and origin of Invoices by electronic means shall be guaranteed by means of advanced or qualified electronic signature (cf. below), or, if required, by means of electronic data interchange (EDI - electronic transfer from computer to computer of information using an agreed standard). If the customer explicitly agrees, invoices may be sent by other electronic means.

12.4. ELECTRONIC IDENTIFICATION

In line with Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market and repealing Directive 1999/93/EC, the new Law No 08/L-022 on Electronic Identification and Trust Services in Electronic Transactions (“Law on Electronic Identification”) repealed the disposition of Law on Information Society related to the use of signature (Chapter XIII).

The new Law on Electronic Identification defines electronic identification as the process of using person identification data in an electronic form uniquely representing either a natural or legal person, or a natural person as a representative of a legal person.



Electronic identification should only be initiated by the person subject to identification. Electronic identification includes means of identification such as electronic signature and electronic seal.

12.4.1. Electronic Signature

The electronic signature is data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign. The signatory is a natural person.

The electronic signature cannot be used if not allowed by a special law and:

- in the field of family law and inheritance law;
- in legal actions which require public legalization, a notarial act or a court authorization;
- in legal actions related to bail for conditional release;

Electronic signatures are divided into simple, advanced and qualified signatures.

Simple electronic signatures do not need any identification verification and therefore provide little level of verification. The simple electronic signature is however valid and acceptable, and the validity or the weight of the proofs may not be denied solely because it is in an electronic form and does not meet a higher standard (qualified electronic signature).

Advanced electronic signature must meet the following requirements:

- be uniquely linked to the signatory;
- be capable of identifying the signatory;
- use data to create an electronic signature, which are solely under the control of the signatory;
- be linked to the data that it signs, in a way that would detect any subsequent change in them.

Qualified electronic signature is an advanced electronic signature that is based on a qualified certificate for electronic signature and is created by a qualified electronic signature creation device. The qualified electronic signature has the equivalent legal effect of a handwritten signature. It is the highest level of security for electronic signatures. The signatory has the sole control of the keys used to create the signature.

The qualified certificate for electronic signature must be issued by a qualified trust service provider. It shall contain:

- the indication that it is a qualified certificate;



- the data on the qualified trust service provider and its country of registration;
- the details of the signatory, if a pseudonym is used, it shall be clearly indicated
- the electronic signature validation data that corresponds to the electronic signature creation;
- the information identifying the certificate's period of validity;
- the qualified trust service provider's certificate identity code;
- the advanced electronic seal or signature of the issuing qualified trust service and where the certificate supporting the said seal or signature is available free of charge;
- the location of the services that can be used to enquire about the validity status of the qualified certificate;
- an indication that the electronic signature creation data related to the electronic signature validation data is located in a qualified electronic signature creation device.

12.4.2. Electronic Seal

The electronic seal is data in electronic form, which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity. An electronic seal relies on the same mechanisms as an electronic signature, however, unlike electronic signature, the creator of the seal can only be a legal person. Like electronic signatures, electronic seals can be simple, advanced or qualified.

The simple electronic seal is valid and acceptable, and the validity or the weight of the proofs may not be denied solely because it is in an electronic form and does not meet a higher standard (qualified electronic signature).

Advanced electronic seals must meet the same requirements as advanced electronic signatures.

A qualified electronic seal is an advanced electronic seal that is based on a qualified certificate for electronic seal and is created by a qualified electronic seal creation device. It shall enjoy the presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked. A qualified electronic seal issued in an EU Member State shall be recognised as a qualified electronic seal in Kosovo. The requirements for qualified certificates for electronic seals are similar to the ones for qualified certificates for electronic signatures (see above).