



Regulation of E-Commerce in El Salvador.

Deloitte Legal Newsletter

One of the newest reforms for our country that was introduced this year into the Consumer Protection Act (hereinafter referred to by its Spanish acronym, LPC) through Legislative Decree 51, published in the Official Gazette 141, Volume 420 on July 30, 2018, is related to electronic commerce, or e-commerce.

The reform that was introduced, starting with its recitals, recognizes the need to regulate this type of commerce from two main perspectives: first, to make consumers' rights known, and second, to establish the special obligations of the suppliers who use this type of technology to offer their products and services.

According to the above, consumers' rights, such as the right of revocation (the consumer's right to unilaterally rescind the contract art. 13 – letter a. roman numeral II of the LPC), protection against misleading advertising, and the prohibition on sharing the consumer's information, among others, shall be rights that can be exercised and protected through the LPC in the exchange of goods or services through e-commerce.

Specifically, the reform introduces, firstly, the definition and scope of the consumer's protection when engaging in e-commerce, which according to art. 13 – C shall be understood as the: "(...) *The process of contracting or exchanging goods, services and commercial information through data communications networks.*"

Subsequently, it introduces art. 13 – D, which specifically deals with the reversal of payments. It is important to indicate that this article is literally binding for suppliers who are legally established in El Salvador, and its scope extends to e-commerce and to any other form of contracting. Under this new article, there is mainly an obligation to reverse the payments made by the consumer within a term of 15 days from the date on which the consumer submits their claim when:

- a) *The consumer exercises their right of revocation;*
- b) *The product acquired has not been received, or the contracted service has not been provided;*
- c) *The item indicated in the contract does not correspond to the item that was ordered, or the item is defective; and*
- d) *There are errors in the collection of the transactions due to failures in third-party payment systems.*

Furthermore, art. 21 – A is added, which contains the **special obligations prior to the contracting** that must be met by those who provide goods and services through e-commerce. Once again, the LPC clarifies that such article is literally binding for suppliers of goods and services who are legally established in El Salvador, with the following sections standing out:

- Letter a), regarding the use of the consumer's confidential information. This data can only be shared with prior authorization, or under the same conditions in which it

was provided or if required by a jurisdictional authority in the country.

- Letter b), regarding the adoption of security systems for the effective, complete and reliable protection of the transactions, especially financial transactions and payments made by consumers. Preferably, the system should be certified, with the supplier disclosing who the certifier is, or otherwise indicating that there is no certification. The supplier shall be responsible for any failures in its systems.

- Letter d), regarding the placement of the terms and conditions for the use of the website, which at a minimum must include: the identification of the supplier, the identification of the ways to submit claims or request clarifications, the special rights and obligations of the parties as a result of the contractual relationship, forms of payment, policies on product guarantees, right of revocation and reversal of payments, and dispatch and delivery conditions and system; and others that the supplier considers appropriate. All these conditions shall be binding and are understood to form part of the acts and contracts executed and entered into through this form of contracting.

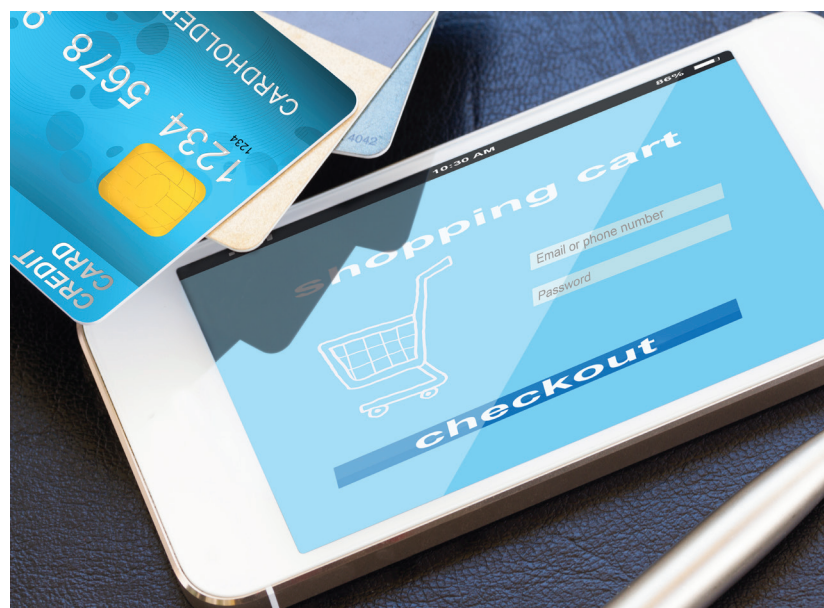
- Letter g), regarding the publication of the general terms of their contracts, which should be available for consultation, printing and downloading, before and after the contracting.

In addition, Article 21 – B is included, which contains the **special obligations for both during and subsequent to the contracting phase** that indicate that the supplier should:

- Letter a), present a summary of the order, containing for all of the goods to be acquired, a full description, unit price, total price of the goods or services, and if applicable, the delivery costs and expenses or any other charge, and the total amount payable. This is with the purpose of having the consumer accept, modify or cancel the transaction prior to formalizing it. The summary of the order should be able to be downloaded and/or printed.
- Letter b), confirm the receipt of the purchase order, no later than by the following calendar day. The confirmation must essentially contain the same information as the summary of the order.
- Letter c), keep in storage mediums for a term of 10 years, counting from the conclusion of the transaction, the documentation that contains the evidence of the commercial relationship: identity of the consumer, stages recorded in the site that demonstrate the desire to contract the good or service, form of payment, and the actual and effective delivery of the goods or services acquired, all ensuring the integrity and authenticity of the information, in accordance with the Electronic Signature Law.
- Letter d), deliver the order by no later than 30 calendar days, counting from the day following the purchase. Unless a longer term had been agreed, failure to comply with the term cited above shall entitle the consumer to terminate the contract and request the refund of the amounts paid without any withholding, per Article 13 of the LPC.

In case of non-compliance, all of these special obligations, (Art. 21 – A and 21- B LPC) are classified as **very serious offenses**, according to Article 44 letter q) that is also included in the reform, and thus penalized with a fine of up to 500 monthly urban minimum wages in the industrial sector, which is currently equivalent to USD \$ 152,085.00 dollars.

With respect to the reforms, we must warn that those who sell their products or services using e-commerce through the various web platforms should perform a review to verify that they are in compliance with the minimum obligations mentioned above, both during and subsequent to the contracting of goods and/or services, with emphasis on those requirements that must be included as an integral part of the web platforms: requirements, specifications, contracting terms, contract formats, order summary and confirmation.



Other obligations whose compliance could represent significant challenges are related to information security systems. Although it is not mandatory to have a certified system, sellers are responsible for failures in these systems, as well as the capturing, safeguarding and storage of information. The specifics for the safeguarding of information should be considered, since the various components that demonstrate the steps that make up the consumer's consent, will be decisive in any claims that must be evaluated in administrative and punitive proceedings that the suppliers may be subject to.

In conclusion, our regulatory framework in favor of consumers is increasingly more robust, which should force suppliers, and not only those that engage in e-commerce, to perform as soon as possible an analysis of the minimum requirements they must comply with, for the purpose of decreasing the risk of penalties in administrative and punitive proceedings before the Consumer Protection Authority, which has high levels of success in its actions and that in fact, under this reform has protected its enforcement authority by classifying as an offense certain actions for which such classification was previously deemed unconstitutional.



Cosette Fuentes de Navarro
Manager
Deloitte Legal

Global news, local views
Deloitte tax@hand newsfeed

Descarga la APP



Our team of experts

We have a team of trained professionals who are specialists in developing effective defense strategies for facing any type of determination, adjustment or ruling issued by the jurisdictional Tax Authority.

Cosette Fuentes

Legal Services Manager
cg.fuentes@deloitte.com

Eduardo Mejía

Tax Controversy Services Manager
edmejia@deloitte.com

Rita Vega

Associate
ritvega@deloitte.com

Patricia Alonso

Staff
paalonso@deloitte.com

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities. DTTL (also referred to as “Deloitte Global”) and each of its member firms are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 264,000 people make an impact that matters at www.deloitte.com.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms or their related entities (collectively, the “Deloitte network”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.