

COVID 19: PRACTICAL GUIDE FOR E-COMMERCE OPERATIONS

Take into account the following guidelines to develop e-commerce operations during the exceptional situation of COVID-19. These guidelines may not be applicable in particular cases.

RELEVANCE OF E-COMMERCE

Within the framework of the State of Emergency decreed by the National Government, Decree 464 of 2020 was issued, which states that, among others, companies providing e-commerce, shipping and logistics operators must give priority to the shipment of the following products requested online: (i) food, beverages, and necessities; (ii) medicines and medical devices; (iii) pet food and medicine; (iv) and telephones, computers, tablets, and televisions.

The Ministry of Commerce, Industry and Tourism and the Ministry of Information and Communication Technology have recognized the importance of e-commerce in ensuring the supply of goods and services during the period of mandatory isolation adopted by the National Government. In this regard, the Ministries considered that companies providing e-commerce services will be able to commercialize *"all the goods that a person requires for the development of its usual activities"*.

SPECIAL OBLIGATIONS FOR OPERATORS OF E-COMMERCE PLATFORMS

obligations and special requirements that must be met by producers or suppliers who commercialize their products through E-Commerce. Some of these special obligations are listed below:

- Inform at all time the information regarding their identity (legal name, tax identification number, notification addresses, etc.);
- Provide true, reliable, sufficient, clear and updated information regarding the offered products (characteristics, properties, size, nature, origin, method of manufacture and, in general, all the information so that the consumer can make a representation as close as possible to the reality of the product);

- Provide information about the payment methods, delivery times, general terms of the contracts celebrated with consumers, costs and delivery charges to be borne by the consumer, the total price of the product including all taxes, costs and charges to be paid by the consumer, the consumer's right of withdrawal (*derecho de retracto*) and the procedure for exercising it, and any other relevant information to permit the consumer to make a purchase decision freely and without being misled;
- The producer or supplier shall implement the adequate communications channels to provide support, adopt appropriate and reliable security measures to ensure the protection of the consumer's personal information and the transaction itself, and have mechanisms so the consumer may file claims or petitions.

RIGHT OF WITHDRAWAL (*DERECHO DE RETRACTO*)

Law 1480 of 2011 provides the right of withdrawal for consumers for, among others, all contracts that use non-traditional or distance methods, as is the case for most e-commerce transactions. In simple terms, the right of withdrawal allows the consumer to cancel its purchase, with no justification, without bearing any penalty for its decision.

The consumer must exercise the right of withdrawal within the following five business days counted since the consumer received the products or after he concluded the contract for services.

If the right of withdrawal is exercised, the contract shall be terminated and the producer or supplier shall return all sums paid to the consumer without any discount or deduction for any reason, within the thirty calendar days following the exercise of the right of withdrawal. The consumer must return the product to the producer or supplier by the same means and in the same condition as received and shall also assume the shipping costs involved in the return.

Notwithstanding the above, Law 1480 of 2011 provides some cases in which the right of withdrawal is not applicable, such as (i) when the purchase is for perishable goods; (ii) when the purchase is for custom-made or personalized products; or (iii) when the purchase is for personal use goods.

PROTECTION OF PERSONAL DATA

Within the framework of transactions in the E-Commerce, producers or suppliers will process multiple personal data of its consumers through the platform. These data will be used for different purposes, such as for the purchase or service provision itself, for marketing activities related to the products or brands of purchased products, or any other legitimate purpose.

Given that personal data will be processed, as a general rule, the producers or suppliers will be considered as Data Controllers, which gives them multiple responsibilities and obligations under the Data Protection regime.

In accordance with the above, as Data Controllers, some obligations will arise, such as (i) to obtain prior, express and informed consent from Data Subjects for the processing of its personal data; (ii) to have a Privacy Policy and to disclose it to Data Subjects; (iii) to implement manuals and internal procedures to ensure compliance with Data Subjects' rights; (iv) to comply with the rules on transfer and transmission of personal data and to require appropriate security measures from third parties; (v) comply with the principle of Accountability, adopting a Personal Data Management Program within the company, which allows demonstrating the adoption of measures aimed at fully complying with the regime; (vi) register the databases with the National Database Registry in case of having assets over 100.000 TVU; and (vii) inform the Superintendence of Industry and Commerce and Data Subjects about any security incident involving personal data.

Finally, as special obligations for the processing of personal data in E-Commerce, Data Controllers or Data Processors shall: (i) adopt measures to prevent the impersonation of consumers; (ii) adopt measures to ensure the security of consumer information; (iii) use personal data to contact consumers on appropriate days and at appropriate times that do not disrupt their peace; and (iv) conduct Privacy Impact Assessments (PIAs) if it is considered that processing personal may generate risks.



CONTACT:

Jorge de los Ríos
jorge.delosrios@phrlegal.com